



The Dialoges

in Englishe, betweene a
Doctor of Diuinitie, and a
Student
in the lawes of Englande,
newely corrected and
imprynted wpth
newe additi-
ons.

By Christopher
Saint German.

Cum priuilegio ad impri-
mendum solum.

¶ Hereafter foloweth the
firste Dialogue in English,
betwixt a doctour of Diuinitie, &
a Student in the lawes of Englande, of the
groundes of the saide lawes, and of con-
science, newly corrected, and
eftsones impzinted with
new addicions.

¶ The Introduction.



Doctour of diuinitie
that was of greete ac-
quaintaunce & familiari-
tie wth a Student in the
lawes of England, said
thus vnto him. I haue
had great desire of long
time to know wherup^{on}
the lawe of England is
grounded, but because
the most part of the law of England is wzitten
in the frenche tongue, therfore I cā not thzough
mine owne study attaine to y^e knowledg ther-
of: for in that tōgue I am nothing expert. And
because I haue alwaies founde thee a faithfull
friend to me in al my busines: Therefore I am
bold to come to thee before any other to knowe
thy minde what be the very groundes of y^e law
of England as thou thynkest. Student. That
woul ask a great leasure, & it is also aboue mye
cunning to do it. Neuerthelesse, that thou shalt
not thinke that I woulde wilfullye refuse to
fulfyll thy desyre, I shall wyth good wyll doe
that

A.ij.

The first Chapter.

that in me is to satisfie thy mynde, but I pray thee that thou wilt first shew me somewhat of other lawes that pertaine most to this matter: and that Doctours treat of, howe lawes have begunne. And then I will gladly shew thee as mee thinketh what be the grounds of the law of England. D. I will wth good w^{ill} dooe as thou sayest: wherfore thou shalt understād that Doctours treat of sower lawes, & which (as me semeth) pertaine most to this matter. The firste is the lawe eternall. The second is the lawe of nature of reasonable creatures, the which as I haue hearde say, is called by them that be learned in the law of England, the law of reason. The third is the lawe of God. The fourth is & law of man. And therfore I w^{ill} first treat of the law eternall.

Of the law Eternall.

The first Chapter.

Like as there is in every artificer a reason of suche things as are to be made by his crafte, so likewise it behoueth that in every governour there bee reason and aforesighte in the gouernour of suche thinges as shall be ordered & done by hym, to them that he hath the gouernance of, And for asmuch as almighty god is the creator and maker of all creatures, to the whiche hee is compared as a workeman to his workes. And is also the governour of all deedes & mouinges that be founde in any creature. Therfore as the reason of & wisdom of God (inasmuch as creatures be create by him) as the reason and foresight of all craftes and workes that haue bene

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It shall be: so the reason of the wisdom of God moving all things by wisdom made to a good ende obtaineth the name and reason of a lawe & that is called the law eternal.

And this law eternal is called the first lawe, and it is wel called the firste, for it was before all other lawes, and all other lawes bee derpyed of it, whereupon saint Augustine sayeth in his first booke of free arbitrement, that in temporal lawes nothing is righteous ne lawfull, but that the people haue derpyed to them out of the law eternal. wherfore euery man hath right and title to haue that he hath righteously of the right wise iudgement of the first reason, which is the lawe eternall. ¶ But howe maye this law eternal be knowne: for as the Apostle writeth in the fift Chapter of his first Epistle to the Corinethians. *Que sunt dei nemo scit nisi spiritus dei.* That is to saye, no manne knowethe what is in God, but y spirit of God. wherfore it cometh that he openeth his mouthe into heauen that attempteth to knowe it. ¶ This law eternall no man may knowe as it is in it selfe but onely blessed soules that see god face to face. But almighty God of his goodnesse sheweth of it as muche to his creatures as is necessary for them for els God should bind his creatures to a thing impossible: which may in no wise be thought in him. Therfore it is to be understād y three manner waies almighty God maketh this law eternal knowne to his creatures reasonable.

First by the light of natural reason. Secōd, by heavenly reuelation. Thirde, by the order of a

The firste Chapter.

prince or any other secondary gouernor: hath power to binde his subiectes to a lawe.

And when the lawe eternal or the will of God, is knowen to his creatures reasonable by the light of naturall vnderstanding, or by the lyght of naturall reason, than it is called the lawe of reason. And when it is shewed by heauenly reuelation in suche manner as hereafter shall appeare, then it is called the lawe of god. And whē it is shewed vnto him by the orde of a Prince or of any other secundary gouernour that hath power to set a lawe vpon his subiectes, then it is called the lawe of manne, though originally it be made of God. For lawes made by man that hath receiued therto power of GOD bee made by God. Therefore the sayd thre lawes that is to say, the lawe of reason, the lawe of god & the lawe of man, the which haue seuerall names after the maner as they be shewed to man, bee called in God one lawe eternal.

And thus is the lawe of whom it is wrytten, Prouerbiorum octauo, where it is sayde . *Per me reges regnant & legum cōditores iusta discernunt.* That is to say: by mee kinges raigne, and makers of lawes discern the trouth. And this suffiseth for this time of the lawe eternall.

Of the lawe of reason: the which by doctors is called the lawe of nature of reasonable creature.

The .ij. Chapter.

Firste

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Firste it is to be vnderstande, that the lawe of nature maye bee considered in two maners, that is to saye: generally and specially when it is considered generallye, then it is referred to all creatures, aswell reasonable as vnreasonable. for al vnreasonable creatures liue vnder a certaine rule to the geuen by nature. necessary for them to the conseruation of their being, but of this lawe it is not our entent to treat at this time. The lawe of nature specialle considered: whiche is also called the lawe of reason, pertaineth onely to creatures reasonable, that is man which is created to the ymage of God.

And thys lawe oughte to bee kepte as wel amonge Jewes, and Gentylls, as amonge Christ. menne. And thys lawe is alwaye good and righteous, styringe and enclynynge a manne to good, and abhorrynge euill: and as to the ordering of the dedes of man it is preferred befoze the lawe of God. And it is wrytten in the heart of euery man teaching him what is to be done & what is to bee fled. And because it is wrytten in the heart, therefore it may not bee put away, ne it is neuer chaungeable by no dyuersitie of place ne time. And therefore againste this law, prescription, statute, nor custome, may not preuaile. And if any be brought in againste it, they be no prescriptions, statutes nor customes, but thinges boide and against iustice. And all other lawes, aswell the lawes of God as to the actes of menne, as other be groundd therevpon.

A. iij.

S. Syth

The second Chapter.

S. Sith the law of reason is writtē in þ harte of euery man, as thou hast saide before, teaching hym what is to be done, and what is to be fled, and the which thou saiest may neuer be put out of the heart: what needed it then to haue any other law brought in, to order the acts & deedes of the people. **D.** Thoughe the lawe of reason may not be chaunged, nor wholly put away, neuertheless before the law written it was greatly let and blinded by euil customes & by manye synnes of the people beside the original synne, in so muche that it might hardely bee discerned what was righteous and what was vnrightheous, and what good and what euill, wherfore it was necessary for the good order of the people, to haue many things added to the lawe of reason, aswel by the church as by secular prynces accordinge to the maners of the countrey and of the people, where suche addicions should be exercised. And this law of reason dyffereth from the lawe of God in two maners. For the law of God is geuen by reuelatis of god, and this law is geuen by a natural lyght of vnderstandinge, And also the law of god ordereth a manne of it selfe by anyghe waye to the felicitie that euer shal endure. And the lawe of reason ordereth a man to the felicitie of this lyfe. **S.** But what be the thinges that the lawe of reason teacheth to be dōe, and what to be fled? I pray thee shew mee. **D.** The law of reason teacheth that good is to be loued, and euil is to be fled. Also that thou shalt do to another that thou wouldest another should do to thee, And that we maye doe
nothyng

The second Chapter fo. 3

nothing against truth. And that a mā must liue peacefully wth other. That Justice is to bee Done to euery man and that w^{ro}ng is not to bee Done to any man. And also ꝑ a trespasser is w^{or}thy to be punished & suche other, of the whiche folow diuers other secondary commaundementes the which be as necessary conclusions deriued of the firste, as of that commaundemente that good is to be beloued, it foloweth that a man shal loue his benefactour. for a benefactour in that he is a benefactour, includeth in hym a reason of goodnesse. for els he aughte not to bee called a benefactour, that is to say, a good doer but an euil doer. And so in that he is a benefactour, he is to be beloued in all times, and in all places. And this law also suffereth many thinges to be done, as that it is lawfull to put away force with force. And that it is lawfull for euery man to defend himselfe & hys goods agaynst an vnlawful power. And thys law renneth with euery mans law, and also with the lawe of God, as to the dedes of man, and must be alwaies kept and obserued, and shall alwaies declare what oughte to folowe vpon the generall rules of the lawe of man, and shal restraine the if they be in any thinge contrarie vnto it. And here it is to be vnderstande, that after some mē the lawe whereby all thynges were in common was neuer of the lawe of reason, but onely in the time of extreme necessitie. For they say that the lawe of reason maye not be chaunged, but they say it is euident that the lawe whereby all thinges, should be in commō is chaūged, wherfore

The thirde Chapter.

foze they conclude that it was neuer the lawe of reason.

¶ Of the lawe of God.

¶ The. iij. Chapter.

The lawe of God is a certaine lawe geuen by reuelation to a reasonable creature shewing hym the wyll of GOD, wyllynge that creature reasonable to bee bounde to doe a thyng or not to do it for obteyninge of the felicity eternall. And it is saide for the obteyninge of the felicity eternall, to exclude the lawes shewed by reuelation of God for the politicall rule of the people, the which bee called Iudicials. For a law is not properly called the lawe of God because it was shewed by reuelation of God, but also because it directeth a man by the nearest waye to the felicitie eternall as beene the lawes of the olde Testament that beene called Moyses, and the lawe of the Euangelistes, the whyche were shewed in muche more excellent manner, then the lawe of the olde Testament was: for that was shewed by the mediation of an Angel. But the lawe of the Euangelistes was shewed by the mediation of our Lord Iesu Christ God & man, and the lawe of god is alwaye righteous and iust. for it is made and geuen after the wyll of god. And therfore al actes and dedes of man be called righteous and iust when they be done according to the lawe of God & be confirmable to

The thirde Chapter. fo. 6

to it. Also sometime a lawe made by man: is called the lawe of God. As when a lawe taketh his principall ground vpon the lawe of God, and is made for the declaration or conseruation of the fayth, and to put away heresies, as dyuers lawes Canons, and also diuers lawes made by the common people sometime doe. The which therefore are rather to be called the lawe of God then the lawe of man. Yet neuerthelesse, all the lawes Cannon be not the lawes of God. For many of them bee made onely for the political rule and conuersation of the people, wherupon Iohn Gerson in the treatise of the spiritual life of the soule, the seconde Lesson, and the thirde Corozallie, saith thus. All the Canons of byshops nor their decrees be not the lawe of God, For many of them be made onely for the political conuersation of the people. And if any man will saye: Bee not all the goods of the church spiritual: for ther belong vnto the spiritualtye & leade to the spiritualtye. We aunswere: That in the whole politicall conuersation of the people, there bee some specially deputed and dedicate to the seruice of God, the which most specially (as by an excellency) are called spiritual menne as religious menne are. And other though they walke in the way of God, yet neuerthelesse, because their office is moste specially to bee occupied aboute suche thinges as pertaine to the common wealth, and to the good ordze of the people, they be therefore called secular men or laye men. Neuerthelesse, the goods of the firste maye no moze bee called spiritual, then

The thirde Chapter.

Then the goods of the other, for they bee thyngs
meere temporall and keeping the bodye as theye
dooe in the other. And by lyke reason lawes
made for the political orde of the church, bee
called many times spiritual as the lawes of god.
Nevertheless, it is but unpropzely. And other
be called ciuil or the lawes of man. And in this
point many be oft times deceiued, and also de-
ceiue other, the which iudge the thinges to bee
spirituall, the whiche al menne knowe be thin-
ges material and carnall. These be the wo-
des of Ihon Gerson in the place alledged bee-
fore. Furthermoze, beside the lawe of reason and
the lawe of man, it was necessary to haue the
lawe of God for fower reasons. The firste be-
cause man is ordeined to the ende of the eternal
felicity the whiche exceedeth the propozcion and
facultie of mans power. Therefore it was ne-
cessarye that beside the lawe of reason and the
lawe of man: he shoulde be directed to hys ende
by a lawe made of God. Second, forasmuch as
for the vncerteintie of mannes iudgement, spe-
cially of thinges peculiar and seldome fallynge
it happeneth oft tymes to folow diuers iudge-
mentes of dyuers menne, and diuersities of
lawes, and therefore to the entent that a man
wythoute anye doubt maye knowe what hee
shoulde doo and what hee shoulde not doe. It
was necessary that he shoulde be directed in all
his deedes by a lawe heauenly geuen by God &
which is so apparant that no man may swarue
fro it, as is the lawe of God. Thirdly, man may
onely make a lawe of suche thinges as he maye
iudge

The fourth Chapter, fo. 7

iudge vpon, and the iudgement of man may not be of inward things, but onely of outward things, and neuerthelesse it belongeth to perfection that a man bee well ordered in bothe, that is to say, aswel inward as outward. Therfore it was necessary to haue the lawe of God, the which shoulde order a man aswel of inward things as of outward things. The fowerth is, because as saint Augustine saith in the first booke of free arbitement, the lawe of manne may not punish all offences: for if all offences shoulde be punished, the common wealth shoulde be hurt as is of contractes. For it can not be avoided, but that as long as contracts be suffered, many offences shall follow thereby. & yet they be suffered for the common wealth. And therefore that no euill shoulde be unpunished, it was necessary to haue the lawe of God that shoulde leaue noe euill unpunished.

Of the lawe of man.

The iij. Chapter.

The lawe of man the which sometime is called the lawe positive is deriued by reason as a thing which is necessarily and probable, following of the lawe of reason, and of the lawe of god. And that is called probable that appeareth to many, and specially to wise menne, to be true. And therefore in enery lawe positive, well made is somewhat of the lawe of reason, and of the lawe of GOD, and to discern the lawe of God and the lawe of reason fro the lawe positive is very harde. And though he it beharde. yet it

The fourth Chapter.

it is muche necessary in euerye moral doctrine,
 and in all lawes made for the common wealth.
 And that the law of man be iust and rightwise
 two things be necessary, that is to say, wisdom
 and auctoritie, wisdom, that he may iudge af-
 ter reason what is to bee done, for the commu-
 nalty and what is expedient for a peaceable con-
 uersation, & necessary sustentation of them. Auc-
 thoritie that he haue auctorizy to make lawes.
 For the law is named of Ligare: that is to say,
 to binde. But the sentence of a wise man dothe
 not bind the comynalty, if hee haue no rule ouer
 them. Also to euery good law be required these
 properties, that is to say, that it be honest, right
 wise, possible in it selfe, and after the custome of
 the countrey, conuenient for the place and time,
 necessary, profitable, and also manifest that it be
 not capcious by any darke sentence, ne myxte
 with anye priuate wealth, but all made for the
 common wealth. And after saynt Briget in the
 fourth booke in the C xxix. Chapter, euery
 good lawe is ordeined to the health of the soule,
 and to the fulfilling of the lawes of God: and
 to enduce the people to fye euill desires and
 to doe good workes. Also as the Cardinall
 of Camerer writeth: whatsoeuer is ryghteous
 in the lawe of man, is righteous in the lawe of
 God, for euery mans lawe muste bee consonant
 to the lawe of God. And therefore the lawes
 of princes, the commaundementes of prelates,
 the statutes of commynalties, ne yet the ordi-
 nance of the Church is not righteous nor ob-
 ligatoz but it be consonant to the lawe of God,
 And

*Moral philosophy
 is the first of the
 sciences. fo: 64. A.*

*What prop-
 ties a good
 law ought to
 haue.*

*What is a
 good lawe?
 It is that which
 is honest, right
 wise, possible
 in it selfe, and
 after the custome
 of the countrey.
 fo: 65. B.*

*What is the
 lawe of God?
 It is that which
 is honest, right
 wise, possible
 in it selfe, and
 after the custome
 of the countrey.
 fo: 65. C.*

The fourth Chapter. fo. 8

And of such a lawe of man that is consonant to the lawe of god, it appeareth who hath right to landes and goods, and who not: for whatsoeuer a man hath by suche lawes of manne hee hathe ryghteouslye. And whatsoeuer is had againste suche lawes is vnrightheously had.

For lawes of man not contrarie to the lawe of God, nor to the lawe of reason, muste be obserued in the lawe of the soule: and hee that despyseth them, despyseth GOD, and resisteth God and furthermoze, as Gracian sayeth, because euil men feare to offend for feare of paine, Therefore it was necessary that diuers paines shoulde bee ordeyned for dyuers offences, as Physicians ordeained diuers remedies for seuerall diseases. And suche paines bee ordeyned by the makers of lawes after the necessitye of the tyme, and after the disposition of the people. And though that lawe that ordeined suche paynes hath thereby a conformitie to the lawe of GOD: for that the lawe of God commaundeth that the people shall take awaye euil from amonge them selues, yet they belong not so muche to the lawe of God, but that other paines standing, the first principles might be ordeined and appoynted, therefore that is the lawe that is called mooste properly the lawe positive and the lawe of man.

And the Philosopher saide in the third booke of his Ethykes, that the entente of a maker of a Lawe is to make the people good, and to bring them to vertue. And though I haue some what in a generallty shewed thes wherupon the lawe

The fourth Chapter.

lawe of England is grounded. For of necessitie it must be grounded of the saide lawes, that is to say of the lawe eternal, of the lawe of reason, and of the lawe of God. Neuerthelesse, I praye thee shew mee more specially whereuppon it is grounded as thou thinkest, as thou before hast promised to doe.

D. I wyl with good will do therein that lieth in me, for thou hast shewed me a right plain and a straight way therto. Therfore thou shalt vnderstand that the lawe of England is ground-
ed vpon sixe principall groundes. Firste it is ground-
ed on the lawe of reason. Seconde on the lawe of God. Thirde, on diuers generall customes of the Realme. Fowerthly of diuers principles & be called Maximes. Fiftly on diuers particuler customes. Sixtly on diuers statutes made in parliaments by the kinge and by the common counsell of the realme. Of which groundes I shal speake by orde as they be rehearsed before, and firste of the lawe of reason.

Of the first grounde of the lawe of Englande. The. v. Chapter.

The first grounde of the lawe of England is the lawe of reason, wherof thou hast treated before in the seconde chapter, the which is kept, in this realme as it is in all other realmes and as of necessitie it must needes bee as thou hast said before. D. But I woulde knowe what is called the lawe of Nature after the lawes of Englands

England. S. It is not vlsed among them that be learned in the lawes of Englande to reason what thing is commaunded or prohibite by y^e law of nature, and what not, but al y^e reasoning in that behalfe is vnder this maner, as whē any thing is groundēd vpon the law of nature: they say that reason wil that suche a thinge bee done and if it be prohibited by the law of nature, they say it is against reason or that reason wil not suffer that it be done. D. Then I praye the shewe me what they that be learned in y^e lawes of the realme holde to be commaunded or phibie by the law of nature, vnder such termes and after such maner as is vlsed amongst them y^e bee learned in the laide lawes. S. There bee put by them that be learned in y^e lawes of Englāde two degrees of the law of reason, that is to say the law of reason primary, and the law of reason secundary, by the law of reason primarie be prohibited in the lawes of England, murther, y^e is the death of him that is innocent, p^urie, deceit breaking of the peace, and many other like. And by the same lawe also it is lawful for a man to defend himself against an vniust power so he kepe due circumstance. And also if any promise bee made by man as to the body it is by the law of reason voidē in the lawes of Englande. The other is called the law of secundarie reason the which is deuīded into two braunches, that is to say, into the lawes of a secundarie reason general and into a law of secundarie reason particuler. The law of a secundarie reason general is grossēd and derīued of that general law or generall

The v. chapter-

custome of property, wherby goods mouable & vnmonable be brought into a certain propertie so that euery man may know his owne thinge. And by this braunch be prohibited in the lawes of England disseisons, trespasse in Landes and goodes, rescues, theft, vnlawful withholding of an other mans goods and such other. And by y^e same law it is a ground in the lawes of Englad that satisfaction must bee made for a trespasse, and that restitution must be made of such goods as one man hath that belonge to an other man, the debtes must be paid, couenants fulfilled, and such other. And because disseisons, trespasse in landes and goods, theft, and such other had not bene knowen, if the lawe of propertie had not bene ordeined. Therefore al thinges that bee derpyed by reason out of the said law of propertie, be called the lawe of reason secundary general, for the law of propertie is generally kept in al our countreyes. The law of reason secundary particuler is y^e law y^e is deriued vpon diuers customes general and particuler, and of diuers maximes and statutes ordeined in this realme. And it is called y^e law of reason secundary particuler, because y^e reason in that case is derpyed of such a law that is only holden for law in this realme, & in none other realme.

¶ Addicion.

D. I pray thee shew me s^oe special case of such law of reason secundary particuler for an example. S. There is a law in Englande, whiche is a law of custome that if a mā take a distresse lawfully y^e he shall put it in a poūde ouert there
to

to remain til he be satisfied of that he distrained
 for. And the therupon may be asked this questi-
 on, & if the beasts dye in pound for lacke of meat
 at whose peril dye they, whether dye they at &
 peril of him that distrained, or of him & owethe
 the beasts? D. If the law bee as thou saiest
 and that a man for a iust cause taketh a distresse
 and putteth it in the pound ouerte, and no law
 compelleth him that distraineth to geue them
 meat, then it seemeth of reason that if & distresse
 dye in pound for lacke of meat, that it died at
 peril of him that oweth the beasts, and not of
 him that distrained, for in him that distreyned
 there can be assigned no default, but in the other
 may be assigned a default, because the rent was
 vnpayde. S. Thou hast geuen a true iudge-
 ment and who hath taught thee to doe so, but
 reason deriued of & said general custome. And
 the law is so full of suche secundarie reasons di-
 riued out of the general customes and maxims
 of the realme that some men haue affirmed that
 at the law of the realme, is the lawe of reason,
 but & cannot be proued as we semeth as I haue
 partly shewed before and more fully will shewe
 after. And it is not much vsed in the lawes of
 Englande, to reason what lawe is grounded
 vpon the lawe of the first reason pꝛimaꝛy, or
 of the lawe of reason secundarie, for the bee
 most commonly openly knowan of them selve,
 but for the knowledge of the lawe of reason se-
 cundarie is greater difficultie, and therfore ther
 in depēdeth much the maner and forme of argu-
 mentes in the lawes of England.

B. 9.

And

The vi. chapter.

10. h. 7. fo. 30
14. 48. fo. 1.
And it is to be noted that al the deriuing of reason in the lawes of England proceadeth of the first principles of the law or of some thing þ is deriued of them. And therfore no mā may right wisely iudge ne groundly reason in the lawes of England if he be ignozant in the first principles. Also al birdes, fowles, wilde beasts, of forestes and warren, and such other bee excepted by the lawes of England out of the said general lawe and custome of property. For by the laws of þ realme no property may be of them in any pson vnlesse they be tame. Neuerthelesse the egges of Haukes, herons, or such other as builde in þ ground of any person be adiudged by the sayde lawes to belong to him þ oweth the grounde.

Of the seconde ground of the lawe of England. The vi. chapter

The second ground of the lawe of Englands is the law of God & therefore for punishmēt of them that offended against the law of God, it is enquired in many courts in this realme, if any hold any opinions secretlye or in anye other maner against the true catholike faith. And also if any general custome were directly against the law of God, or if any statute were made directly against it, as if it were ordeined that no almesse should be geuen for no necessity þ custome and statut were void. Neuertheles the statut made in the xxij. yere of king Edward the iij. whereby it is ordeined that no man vnder pain of imprisonment shal geue any almesse to any valiat beg-

beggers that may wel labour, that they may so
 be compelled to labour for their living is a good
 statute, for it obserueth the entent of the law of
 God. And also by auctoritie of this law there
 is a groude in the laws of England, & hee that
 is accursed shal maintein no accion in & kinges
 court, except it be in very few cases, so that the
 same excommunicacion be certified befoze & kin-
 ges iustices, in such maner as & law of the realm
 hath appoited. And by & auctority also of this
 ground & law of England admitteth the spiry-
 tuall iurisdiction of dioces and offeringes. And
 of al other thinges & of righte belonge vnto it.
 And receiveth also al lawes of the church duly
 made, and that excede not the power of them &
 made the. In so much in many cases it behoueth
 the kinges Iustice to iudge after the lawes of
 the churche. D. How may that bee that the
 kings iustices should iudge in & kings courtes
 after the law of the church, for it seemeth & the
 church should rather geue iudgemēt in such thi-
 ges as it may make lawes of, then & kings Ju-
 stices. S. That may bee done in manye cases
 wherof I shal for an example put this case. If
 a writ of right of ward be brought of the body.
 &c. And the tenant confessing the tenour and &
 nonage of the infant, saith that the infant was
 married in his auncesters daies &c. wherupon
 xij. men be swozne which geue this verdit, that
 the infant was married in the life of his aunces-
 tour. And & the woman in the life of his aun-
 cestour sued a deuorze wherupon sentēce was
 geue that they should be diuorced. And that the

*marry of the
 infant*

The vi. chapter.

heire appeled, whiche hangeth yet vndiscussed
 praying & aide of the iustice to know whether &
 infant in this case shalbe said married or no. In
 this case if the law of the church be & the sayde
 sentence of diuorice standeth in his strength and
 vertue vntil it be adnulled vpon the said appele.
 That the infant at the death of hys auncestour
 was vnmarried because the first mariage, was
 adnulled by that diuorice. And if the law of the
 church be that the sentence of the deuorice stan-
 deth not in effect til it be affirmed vpon the said
 appele, the is & infant yet married, so that & va-
 lue of his mariage cannot belong vnto the lord.
 And therfore in this case iudgement condicionel
 shalbe geuen &c. And in likewise the kinges iu-
 stice in many other cases shal iudge after & law
 of the church like as & spiritual Iudges must
 in many cases, sournie their iudgement after the
 kings lawes. D. How may that bee, that the
 spiritual iudges should iudge after the kinges
 lawes, I pray thee shew me so certain case ther
 of S. Though it be somewhat a digression fro
 our first purpose, yet I wil not withsaye thy de-
 sire, but wil with good will put thee a cale or
 two therof, that thou maiest the better perceiue
 what I mean. If A. & B. haue goodes jointly
 and A. by his last wil bequeueth hys porcyon
 therin to C. and maketh the said B. hys execu-
 tor & dyeth. & C. asketh the execucion of thys
 wil in the spiritual court. In this case the iud-
 ges there bee bounde to iudge that will to bee
 void, because it is void by the lawes of & realme
 And in likewise if a man be outlawed, & after
 by

1794. 10. 10.
 1794. 10. 10.
 1794. 10. 10.
 1794. 10. 10.
 1794. 10. 10.

by his wil bequeueth certein goods to John at stile, and make his executours and die, & king seileth the goods & after geneth them againe to the executours, and after John at stile sueth a stracion out of the spiritual courte agaynste the executours, to haue execution of & wil, in thys case & iudges of the spiritual court must iudge & wil to be voyde as the law of the realme is, & it is. And yet ther is no suche lawe of forfaiture of goods by outlagary in the spiritual law.

Of the thirde ground of the law of
England. The viij. Chapter.

The thirde ground of the lawe of Englands standeth vppon diuers generall customes of old time vsed thzough al the realm, which haue bene accepted & approued by our soueraign lord the king and his progenitours, & al theire subiectes. And because the said customes be neither against the law of god, nor the law of reason, & haue ben alway taken to be good and necessary for the cōmon wealth of al the realme. Therfor they haue obtained the strength of a law in so much that he & doth against them, doth against iustice. And these be the customes that properly be called the cōmon law. And it shal alway bee determined by the iustices whether ther be any such general custō or not, & not by xij men. And of these general customes & of certain principles that bee called maximes which also take effects by & olde custome of & realme, as shal appere in the chap. next folowing dependeth most part of the law of this realme.

W. iij.

And

The vii. chapter.

And therfore our soueraigne lord & king at his coronation among other things taketh a solene othe, that he shal cause all the customes of his realme saythfully to be obserued D. I praye the shew me some of these general customes S. I will with good will, and firste I shall shewe thee how the custome of the realme is & very ground of diuers courtes in the realme & is to say of the chauncery, of the kings benche, of the comon place and the Eschequer, & which be courtes of record, because none may sit as iudges in those courts but by & kings letters, patents. And these courtes haue diuers auctorities, wherof it is not to treat at this time. D. Other courts there be also onely grounded by the custome of the realme, that be of much lesse auctoritie then the courtes before rehearsed, as in euery shire within the realme, ther is a court & is called the county, and an other that is called the shirifes tozne, and in euery maner is a court that is called a court Baro. And to euery faire and market is incident a court that is called a court of Hipowders. And though in some statutes is made mencion sometime of the sayde courts, yet neuerthelesse of the first institucion of the said courtes, and that such courts should be, ther is no statute nor law writte in & lawes of Englande. And so al the ground & beginning of the said courtes depend vpon the custome of the realme, the which custome is of so high auctoritie that the said courtes ne their auctorities may not be altered, ne their names chaliged without Parliament.

Also

*a division of
courtes.*

¶ Also by the olde custome of the realme no mā shalbe takē imprisoned disseased nor otherwise destroyed, but he be put to aūswere by the law of the land, and this custome is confirmed by statute of Magna carta the xxvi. chapter.

¶ Also by the old custome of the realme all mē great and smale shal do and receiue iustice in kings courtes, & this custome is confirmed by the statut of Mar. i. chapter.

¶ Also by the old custome of the realme, the eldest sonne is onely heire to his auncestoz, and if there be no sonnes but daughters, then all the daughters shalbe heire, and so it is of sisters & other kinswomen. And if ther be neither sonne daughter, bzother, nor sister, then shal the inheritance discend to the next kinsman oz kinswoman of the whole bloude to him ꝑ had the inheritāce of howe manye degrees soeuer they bee from him. And if there be no heire general nor special then the land shal eschet to the Lord of whō the land is holden.

¶ Also by the olde custome of the realme lands shal neuer ascende, oz discende, from the sonne to the father oz mother, nor to any other aūcestor in ꝑ right lyne, but it shal rather eschete to ꝑ Lord of the fee.

¶ Also if any alpen haue a sonne that is a alien 22. H. 6. 38. & after is made Denizen and hath another sone, & after purchaseth lands & dieth, the yonger sonne shal inherite as heire & not the eldest. *22. H. 6. 38. & after is made Denizen*

¶ Also if ther be thzee bzethzen and the myddlest brother purchase Landes and dieth withoute heire of his body, the eldest brother shal inherite *for the eldest sonne*
Lib. 2. a.

The vii. chapter.

as heire to him, and not the yonger brother.

¶ Also if land in fee simple discend to a man by the part of his father, and he dieth without heire of his body, then the inheritance shal discend to the next heire of $\frac{1}{2}$ part of his father. And if ther be no such heire of the part of his father, then yf the father purchased the landes it shal go to the next heire of the fathers mother, and not to the next heire of the sonnes mother, but it shal rather Eschete to the lord of the fee, but if a man purchase lands to him and to his heires, & dye without heire of his body, as is said befoze, the land shal discend to the next heire of $\frac{1}{2}$ parte of his father if there be any, and if not, the to $\frac{1}{2}$ next heire of the part of his mother.

¶ Also if the sonne purchaseth landes in fee & dye without heire of his body, the Lande shall discend to his vncle, & shal not ascēd to his father, but if the father haue a sonne though it be many yeres after the death of the elder brother, yet that sonne shal put out his vncle and shall enioy the land as heire to his elder brother for ever.

¶ Also by the custome of the realme the chyldre that is bozne befoze espousels is bastard & shal not inherite.

¶ Also the custome of the realme is y^e no maner of goods nor catels real nor personel shal neuer go to the heire, but to the executozs, or to $\frac{1}{2}$ or dinary or administratozs. Also the husbände shal haue al y^e cattels parsonels that hys wyfe had at the time of the espousels or after, & also chattels real if he ouer liue his wyfe but yf hee sell

lit. fo. 1. et. 2.
39. 3. fo. 30. a. b.
p. Brooke title
Dissent. n. 1.
49. 3. fo. n.

contra in rem
unders p. 1. a. f.
et h. m. g. m. p. 1.
p. 1. a. b. b. r. o. k.
to lit. dissent.
fo. 1. a. b. 58.

except they are
deforced for
then the wyfe
shall haue the
goods, as it is in
26. h. 8. fo. 7.

sell or geue away the chatels reals & die, by that
 sale or gift the ēterest of the wife is determined
 & els they shal remain to þ wife if she ouer liue
 her husband. Also the husband shal haue all the
 inheritance of his wife wherof hee was seysed
 in dede in the right of his wife during the espou
 sels in fee or in fee taile general for terme of life,
 if he haue anye childe by her to hold as tenāt by
 the curtesie of England & the wife shal haue þ
 thirde part of the inheritāce of her husband wher
 of he was seised in dede or in law after þ espou
 sels &c. but in þ case the wife at the death of her
 husband must be of the age of ix. yere or aboute or *Lib. fo. 8. a.*
 els she shal haue no dowry. D. What if þ hus
 bād at his death be in the age of ix. yeres S.
 I suppose she shal yet haue her dower. ¶ Also
 þ old law & custōe of þ realme is, þ after þ deth
 of euery tenāt þ holdeth his lands by knightes
 seruice, the lord shal haue the warde & marpage
 of the heire til the heire come to the age of xxi.
 yere. And if the heire in that case be of full age
 at þ death of his ācestoz, thē he shal pay to his
 lord his relief, which at the common law was
 not certain, but by the statut of Magna carta,
 it is put in certē, that is to say, for euery whole
 knightes fee to pay ℥. s. And for a whole baro
 ny to pay a c. marke for relief, & for a whole erle
 dome to pay a ℥ li. & after the rate. And if the
 heire of such a tenant be a woman, and she at þ
 death of her ācester be in thage of xiiij. yeres
 thē by þ cōmon law she should haue bē in ward
 only til xiiij. yere, but by the statute of Westm þ
 first in such case she shalbe in warde til xvi. yere
 And

The vii. chapter.

And if at the death of her auncester she be of y^e age of xiiij. yere or above, she shalbe out of ward though the landes be holden of the king, & then she shal pay reliefe as an heyze male shal.

¶ Also of landes holden in socage if the auncester dye, his heire being within the age of xiiij. yeres the next frende of the heire to whom the inheritance may not discend shal haue the swarde of his body and landes til he shal come to the age of xiiij. yere, and then he may enter. And whē y^e heire cometh to y^e age of xxi. yere, thē the garde shal yeld him accompt for the profits therof by him receiued.

¶ Also such an heire in socage for his relief shal double his rent to the Lord the yere folowinge the death of his auncester, as if his auncester held by xij. s. rent the heire in the yere folowinge shal pay the xij. s. for his rent, and other xij. s. for his reliefe. And the relief he must pay though he be within age at the death of his auncester.

¶ Also there is an old law and custome in thys realme, y^e a freehold by way of feoffemēt, gift, or lease passeth not without liuery of season bee made vpon the land accordyng though a dede of feoffemēt be therof made & deliuered, but by way of surrender, particion & eschaunge a freehold may passe without liuerye.

¶ Also if a man make a wil of land wherof he is seased i his demesne as of fee, y^e wil is void, but if it had stand in feoffes hāds it had bene good. And also in London such a wil is good by the custome of the city if it be inrowled.

¶ Also a lease for terme of yeres is but a chatel y^e lawe

What way a
freehold may
pass without
liuerye.

law, & therefore it may passe wout any liuery of
season, but otherwile it is of a state for terme of
life for þ is a frehold in þ law: & therfore liuery
must be made therfor or els þ frehold passeth not

¶ Also by the old custome of the realme a man
may distrein for a rent seruice of cōmon righte.

And also for a rent reserued vpon a gift in taile
a lease for terme of life, of yeres, & at wil, and in

such case the Lord may distrein the tenants of
beastes, as soone as they come vpon the ground,

but þ beastes of strangers þ come in but by ma-
ner of an escape, he may not distrein til they haue

bene leuāt and couchant vpo þ ground, but for
debt vpo an obligation nor vpon a contract, nor

for accompt ne yet for arerages of accōpt, nor
for no maner of trespass, reparacions, nor suche

other no man may distreine.

¶ Also by the old custome of the realme all p-
sues that shalbe ioined betwixt party and party

in any court of record within the realme except
a sewe wherof it needeth not to treat at thys

time, must be tried by xij. free and lawful men of
the visne that bee not of affinitye to none of the

partes. And in other courts that be not of re-
corde, as in the county, court baron, hūdred and

such other like, they shalbee tried by the othe of
the parties and not otherwile vnles the parties

assent that it shalbe tried by the homage. And it
is to be noted that Lords, barons, and al piers

of þ realme be excepted out of such trialls if they
will, but if they wil wilfully be sworne therin,

some say it is none errour. And they may if they
wil haue a writ out of the chauncerye directed

to

for what
things a man
may distreine
for what not.

of piers of þ realme
shalbe impaneled
in noe enquest
except they will

The vii. chapter.

to the shirife cōmaunding him that he shal not impanel them vpon no enquest. And of this þ is said befoze it appereth that þ customes afore said noz other like vnto them, whereof be very many in the lawes of England can not be pzo= ued to haue the strength of a law only by reaso= for how may it be pzoed by reason that the el= dest sonne shal only inherite his father, and the yonger to haue no part, oz that the husbād shal haue the whole lande for terme of his life as te= nant by the curtesy in such maner as befoze ap= peareth: And that the wife shal haue onlye the thirde parte in the name of her dower, and that the husbād shal haue al the goods of his wyfe as his owne. And that if he dye liuing the wife that his executours shal haue the goods, & not the wife. Al these & such other can not be p= ued onely by reason that it should be so and no other wise, although they be reasonable, & that wyth the custome therin vsed suffiseth in the law. And a statut made against suche generall customes ought to be obserued because they be not merely the law of reason.

¶ Also the law of pzeperity is not the lawe of reason but a law of custome how be it that it is kept, and is also right necessary to be kept in al realmes and among al people. And so it may be numbred amonge the generall customes of the realme. And it is to vnderstand that there is no statute þ treateth of the beginning of the sayde customes: ne why they should be holden for law. And therfore after thē that be learned in þ lawz of the realme, þ old custome of the realme is the only

only and sufficiēt aucthoritie to thē in þ behalfe
 And I pray thee shew me what doctours hold
 therein, þ is to say, whether a custome onely bee
 sufficient aucthoritie of any lawe. D. Doctours
 hold þ a lawe grounded vpon a custome is the
 most surest law, but this thou must alwaies vn-
 derstād therewith, þ such a custome is neither cō-
 trary to the law of reason, nor to þ law of God
 And now I pray thee shew me somewhat of þ
 Maximes of the law of England wherof thou
 hast made mēcion befoze in the iij. Chapter
 I wil with good wil.

Of the iij. ground of the law of
 England. The viij. Chapter.

The iij. ground of the law of England stand-
 eth in diuers principles that be called in the
 law maximes, þ which haue beene alwaies ta-
 ken for law in this realme, so that it is not law
 full for none that is learned to deny them, for e-
 uery one of those maximes is sufficient auctho-
 rity to him selfe. And which is a maxime, & which
 not, shal alway be determined by the iudges, &
 not by xij. men. And it nedeth not to assigne any
 reason, why they were first receiued for maxi-
 mes for it suffiseth þ they be not against þ law
 of reason, nor þ law of god, & that they haue al-
 way be taken for law. And such maximes be not
 onely holden for law, but also other cases lyke
 vnto thē & al things þ necessarily foloweth vpon
 the same are to be seduced to þ like law, & ther-
 fore most cōmely ther be assigned sōe reasons or
 cons

The viii. chapter.

consideracion why such maximes be reasonable to the entent that other cases like may the more conueniently be applyed to them. And they be of the same strength and effect in y law as statuts be. And though y general custome of the realme be the strength and warrant of y said maximes as they be of the general customes of the realme yet because y said general customes be in maner knowen thzough the realme aswel to them that be vnlearned as learned, and may lightly be had and knowen, and that with little study. And the maximes be only knowen in the kings courtes or among them that take great study in the law of the realme, & among few other persōs. Therfore they be set in this wrytīg for seuerall groundes & he that listeth may so accompt them, or if he wil he may take them for one ground, after his pleasure, of which maximes I shal hereafter shew the part.

First ther is a maxime that escuage vncertein maketh knights seruice.

Also there is another maxime that escuage certain maketh socage.

Also that he that holdeth by castel garde, holdeth by knights seruice, but hee holdeth not by escuage. And that he that holdeth by xx.s. to the garde of a castel holdeth by socage.

Also ther is a maxime that a discente taketh a swape an entre.

Also that no prescription in lands maketh a right.

Also that a prescription of rent and profits appzender out of land maketh a right.

Also

The.viii,Chapter. fol.17

Also that the limitation of a p[re]scripcion generally taken is fro the time that no mans mind renneth to the contrary.

Also that assignes may be made vpon landes geuen in fee for terme of life , or for tearme of yeares though no mencion bee made of assignes & the same lawe is of a rente that is graunted, but otherwile it is of a warrantie and of a coneu[n]ant.

Also that a condicion to auoyde a freeholde cannot be pleaded without deede, but to auoide a gifte of a chattell it maye bee pleaded without deede.

Also that a release or a confirmacion made by him that at the time of the release or confirmacion made had no right is voyde in the law, though a right come to him after, excepte it bee with warrantie, and then it shal bare him of al ryghte that hee shal haue after the warrantie made.

*Ante. 105. b.
21 E. 4. 81. b.*

Also that a right or title of accion that onelye dependeth in accion cannot be geue[n] nor graunted to none other but onely to the tenaunt of the ground, or to him that hath the reuercion or remainder of the same lands.

Also that in an atcion of debt vpon a contract the def. may swage his lawe, but otherwile it is vpon a lease of landes for terme of yeres or at will.

Also, that if an exigent in case of felony be awarded agai[n]st a mā: he hath therby forthw[ith] forfeited his goods to the king.

Also, if the sonne be attaynted in the lyfe of the

C. i.

the

The viij. Chapter.

the father, and after he purchaseth his chartour of pardone of the kyng, and after the father dyeth. In this case the lad shal eschete to the lord of the see, in so muche & thonghe he haue a younger brother, yet the land shal not discend to hym for by the attaindre of & elder brother, the bloud is corrupt, and the father in laswe died without heire.

Also, if an Abbot oz a Prior aliene the landes of his house and dieth in & case, though his successor haue right to the landes, yet hee may not enter: but he must take his accion & is appoynted him by the laswe.

Also there is a Maxime in the lasw, that if a villayne purchase landes and the lord entre, he shal enioy the land as his own: but if & vilaine aliene befoze & lord entre, & alienacion is good And the same laswe is of goods.

Also if a man steale goods to the value of. xij d. oz aboue, it is felony, & he shal die for it. And if it bee vnder & value of. xij d. then it is but petit larceny, & he shal not die for it, but shal bee otherwise punished after & discrecion of the Judges, excepte it bee taken fro the person, for if a man take anye thyng, how litle soeuer it be fro a mans person feloniously, it is called robbery, & he shal die for it.

Also, hee & is arraygned vpon an inditeiment of felony shal bee admitted in fauour of lyfe to chalenge. xxxv. iurours peremptorie, but if hee chalenge anye aboue that nomber, the laswe taketh him as one that hath refused the laswe, because he hath refused thre whole enquestes, & therefore

therfoze he shall dye, but with cause he may challenge as many as he hath cause of challenge to. And further it is to be vnderstād, & such peremptory challenge shal not bee admitted in appeale because it is at the suite of the party.

Also the land of euery man is in the lawe enclosed frō other, though it lye in the open fiede. And therfoze if a man do a trespass, therein the writ shalbe *Quare clausum fregit*.

Also, & rentes, commons of pasture of turebary, reuerfions remainders, noz such other thinges whiche lye not in manuel occupacion, maye not be geuen noz graunted to none other without writting.

Also that he & reouereth debt oz damages in the kynges courte by suche an accion wherin a *Capias* lay into & procelle may within a yere after & recovery haue a *Capias ad satisfaciendum* to take the bodye of the defendaunt, and to commit him to priso till he haue payd the debt & damages, but if ther lay no *Capias* in & first accion then the pleintife shal haue no *Capias ad satisfaciendum*, but must take a *fieri facias*, oz an *Elegit* within the yere: oz a *Scire facias* after & yere, oz within the yere if he will.

Also if a release oz confirmacion bee made to hym, & at the time of the release made had nothing in the lande &c. The release oz confirmacion is boide excepte certeine cases, as to vouche and certeine other which neede not here to be remembzed.

Also there is a *Maxime* in the law of Englande, that the kyng maye diseafe no man, ne

C.ij.

that

part B 14.

X

The viij. Chapter.

that no man may dissease the king ne pull anye reuerſion or remainder out of him.

Also the kynges excellencye is so highe in the law, that no frehold may be geuen to the kinge ne bee deriued from hym, but by matter of recoꝛde.

Also, there was sometime a Maxime and a lawe in Englande that no manne should haue a wyttte of right, but by special suite to the king, & for a fine to be made in y^e chauncery for it. But these maximes be chāged by the statut of Magna carta, the. xvi. Chapter. wher it is sayd thus, Nulli negabimus, nulli vendemus rectum vel iustitiam. And by the woꝛdes nulli negabimus, a man shal haue a wyttte of ryghte of course in the Chauncery without suing to the kyng for it. And by the woꝛds, nulli vendemus, he shal haue it without fine: and so many times the old Maximes of the law be chaunged by statutes.

Also, though it be reasonable that for the manifold diuersities of actions that be in the laws of England, that there should be diuersities of processe, as in the reall accions after one maner and in personal accions after another maner: Yet it cannot bee proued merelye by reason that the same processe ought to be had & none other: for by statute it mighte bee altered. And so the ground of the said processe is to be referred onely to the Maximes & customes of the realmes.

And I haue shewed thee these Maximes before rehearsed, not to the entente to shewe thee specially what is the cause of the lawe in them, for that would ask a great respite. But I haue shewed

The. viij. Chapter fo. 19

Shewed them onely to ſentent that thou mayſt perceiue that the ſaid Maximes and other like, may conueniently be ſet for one of the groundes of the laſwe of Englande. More ouer, there bee diuers cauſes, whereof I am in doubt whether they be onely Maximes of the laſw or that they be grounded vpon the laſwe of reaſon, wherein I pray thee let me heare thine opinion.

D. I pray thee ſhewe thoſe caſes & thou mea-
neſt, and I ſhal make thee aunſwere therein as
I ſhall ſee cauſe.

¶ Hereafter foloweth diuers caſes, wherin the
Student doubtethe whether they bee
onely Maximes of the laſw, or that
they be grounded vpon the
laſwe of reaſon.

The. ix. Chapter.

The laſwe of Englande is, that if a man com-
maunde another to dooe a trespaffe, and hee
doth it, that the commaunder is a trespaffer.
And I am in doubt whether that it be only by
a Maxime of the laſw, or that it bee by the lawe
of reaſon.

Alſo, I am in doubt vpon what laſwe it is
grounded, that the acceſſory ſhall not be put to
aunſwere before the principall &c.

Alſo, the laſwe is that if an Abbot buy a thig
that commeth to the vſe of the houſe, and dyeth
that his ſucceſſours ſhalbe charged. And I am
ſomewhat in doubt vppon what ground that

C. iij. law

The.ix. Chapter.

lawe dependeth.

Also, that he þ hath possession of lād, though he it be by disseison hath right against al men, but against him þ hath right.

Also, þ if an accion real bee sued against anye mā þ hath nothing in the thing demaunded, the wꝛit shal abate as at the common law.

Also, that the alienacion of the tenāt hanging the wꝛit noz his entre into religion, oz if hee bee made a knight, oz if she be a woman & take an husband hanging the wꝛit, that the wꝛyt shal not abate.

Also if land & rent þ is going out of the same land come into one mans hande of like estate & like suertie of title, þ rent is extinct.

Also if land discend to him þ hath the right to þ same land before, he shalbe remitted to his better title if he will.

Also if two titles be concurraunt together, þ eldest title shalbe preferred.

Also that euery man is bound to make recompence for such hurt as his beastes shal do in the corne oz grasse of hys neyghbour, though hee know not that they were there.

Also if the demaundaunt oz playntiffe hangynge hys wꝛytte wyl enter into the thyng demaunded, hys wꝛyt shal abate. And it is manye times very hard and of great difficultye to know what cases of þ lawe of England bee grounded vpon the lawe of reason, and what vpon custome of the Wealme, and though it bee hard to discusse it: it is very necessary to be known, for þ knowledge of the perfit reason of þ lawe

The. viij. Chapter fo. 20

lawe, and if any man thinke þ these cases befoze rehearsed be grounded vpon the law of reason, then he may referre them to the first ground of the law of England, which is the law of reason wherof is made mencion in the. v. chap. And if any manne think þ they be grounded vpon the law of custome, then he may referre them to the maximes of the law, which bee assigned for the thirde ground of the law of Englande wherof mencion is made in the. viij. chap. as befoze appeareth.

D. But I pray thee shew me by what authority is it proued in þ lawes of Englande þ the cases þ thou haste put befoze in the. viij. chapter & such other which thou callest maximes ought not to be denied, but ought to bee take as maximes for lithe they cannot bee proued by reason as thou agreeest thy selfe they cannot, they may as lightly bee denyed as affyrmed vnlesse ther bee some suffycient authorytpe to approue them.

S. Many of the customes and maximes of the lawes of Englande bee knowen by the vse & the custome of the realme so apparauntlye that it nedeth not to haue anye lawe written thereof for what nedeth it to haue anye lawe wrytten that the eldest sonne shall enherite his father, or that al the daughters shall enherite together as one heire if there be no sonne, or that the husband shal haue the goods & chatels of his wyfe þ shee hath at the time of þ spousels or after or þ a bastard shal not inherit as heire or þ executors shal haue the disposicion of all þ goods of
C. liij.
their

02,02

their testatour: and if there bee no executors
that the Ordinarie shall haue it, and the heire
shal not meddle with the goods of hys aunces-
tre: but if anye particuler customes help him.
The other Maximes and customes of the lawe
that be not so openly knowne amōg the people
may be knowne partlie by the lawe of reason
& partly by the booke of the lawes of Englan
called yeres of termes, and partly by diuers re-
cords remaining in the kings courts and in his
treasury. And speciallie by a booke that is cal-
led the Register, and also by diuers statutes,
wherin many of the said customes & Maximes
be oft resyted, as to a diligēt searcher wil euident-
ly appeare.

**¶ Of the fifth ground of the lawe of
Englande.**

The x. Chapter.

The fyfth grounde of the law of Englands
standeth in diuers particuler customes vsed
in diuers countie, towne, Cities, and Lord-
shippes in thys Realme, the whyche particu-
ler customes, because they bee not againste the
law of reason nor the law of God, though they
be against the said generall customes or Max-
imes of the law, yet neuertheless they stande in
effect and be taken for law, but if it rise in ques-
tion in the kinges courtes, whether there bee
any such particuler custome or not, it shalbe tri-
ed by .xij. men, and not by the Iudges, excepte
the

un general
Tudor / 1640
de la armada
de mar y tierra
de 12 barcos
ante el 11.

The. x. Chapter fo. 21

the same particuler custōe be of recozd in y same court. Of which pticuler customs, I haue here after noted some for an example.

First ther is a custome in Kent that is called Gavelkind, that all the bzethzen shall inherit together, as sisters at the common lawe.

Also, there is another particuler custōe, that is called burghenglish, wher y yōger sōne shall inherit befoze the eldest, and that custome is in Nottingham.

Also there is a custome in the Citie of Lōdō that free men there, maye by their testamēt enrouled bequeath their lands that they be ceased of, to whom they wil except to mortmaine. And if they be Citizens and freemen, that they maye also bequeethe their lands to mortmaine.

Also in Gavelkind though the father be hanged, the sonne shal inherit. For their custome is the father to the bough, the sonne to the plough.

Also in some countreyes the wyfe shall haue the halfe of the husbundes lands in the name of her dowry as long as she liueth sole.

Also in some countrey the husband shal haue the halfe of the inheritance of his wife, though he haue no issue by her.

Also in some countrey an infant when he is of age of. xii. yere maye make a feoffement, and the feoffement good. And in some countrey when he can meat an elle of cloth.

Of the first ground of the lawe
of England.

The

The.xj. Chapter.

The.xi. Chapter.

The sixthe grounde of the lawe of England standeth in diuers statutes made by oure soveraigne Lorde the king and his progenitours & by the lordes spiritual & tempozal, & the commons in diuers parliamēts in such cases wher the lawe of reason, the lawe of God, customes, maximes ne other grounds of the law seemed not to be sufficient to punish euill mē, & to rewarde good men. And I remember not that I haue seene any other groundes of the law of Englaūd but onely these that I haue befoze remembred. Furthermoze it appeareth of that I haue sayd befoze that oft times two or thzee groundes of y^e law of England must bee ioyned together, or y^e the plaintife can open and declare his right, as it may appeare by this example. If a mā entre into another mans lande by force, & after maketh a feoffement for maintenāce to defraude y^e pleintife from his action. In this case it appeareth y^e the said vnlawful entre is prohibite by the lawe of reason, but the plaintife shall recover treble damages, that is by reason of the statute made in the.viij.yere of king Hērye y^e.vi. y^e ix. Chapter. And that the damages shalbee leased by .xij. men y^e is by y^e custome of the realme. And so in this case thzee groundes of the lawe of England maynteine the plaintifes accion. And so it is in diuers other cases that neede not to be remembred now, and thus I make an ende for this time, to speake any farther of the grounds of the lawe of England. D. I thanke thee

The.xi. Chapter fo. 22

thee for the great paine & thou hast taken therein neuerthelesse for as muche as it appeareth & thou hast sayd befoze, & the learned men of the law of England pretend, to verifys & the lawe of England wil nothing do, ne attempt against the law of reason, nor the lawe of God, I praye thee answer me to some questions grounde vpon the law of England howe as thou thinkest the lawe maye stande with reason or conscience in them.

S. But the case & I shal make answer therein as wel as I can.

The first question of & Doctour, of the lawe of England and conscience.

The.xij. Chapter.

I haue hearde saye, & if a man & is bound in an Obligation pay the money, but he taketh no acquittance or if he take one and it happeneth him to leese it, & in that case he shalbe compelled by the lawes of England to pay the money agayne, and how may it be sayd then that, & law standeth wyth reason or conscience, for as it is grounde vpon the law of reason that debts ought of right to be payde, so it is grounde vpon the lawe of reason (as me seemeth) & when they be payde that hee that payde them shoulde bee dyscharged. S. Firste thou muste vnderstande that it is not the lawe of Englands, that yf a manne that is bounde in an Obligation paye the moneys wythoute acquittance
or

The .xij. Chapter.

or if hee take acquitaunce and leese it, that ther-
 fore the law determineth that he ought of right
 to pay the money eftsones, for that lawe swere
 both against reason and conscience, but though
 it is that there is a general Maxime in the law
 of England, that in an action of debt sued vpon
 an obligation, the defendant shal not pleade that
 he oweth not the money, ne can in no wise dys-
 charge him selfe in that accion, but hee haue ac-
 quitaunce or some other wrytyng sufficient in
 the lawe or some other thynge lyke, wrytning
 that he hath payde the money, and that is orde-
 ned by the lawe to auoyde a greate inconueny-
 ence that els myghte happen to come to manye
 people: that is to say: that euery man by a nude
 paroll and by a bare auerment shoulde auoyde
 an obligation. Wherefore to auoyde that incon-
 uenience the law hath ordeined that as the de-
 fendant is charged by a sufficient wrytyng,
that so he must be discharged by sufficient wry-
ting, or by some other thing of as high auctho-
tie as the obligation is. And though it may fo-
 loswe theruppon, that in some particuler case a
 man by occasion of that general Maxime maye
 be compelled to pay the money againe that hee
 payde before: yet neuerthelesse, no defaulte can
 be therfore assigned in the law. For like as ma-
 kers of law take heede to such thinges as maye
 oft fall, and do mooste hurte amonge the people
 rather then to particuler cases: So in likewise
 the generall groundes of the lawe of Englande
 hede more what is good for many, then what is
 good for one singuler person onely. And because
 it shoulde

*How an oblig-
 ation ought to
 be auoyded.*

see fo. 31. after.

The. xij. Chapter fo. 23

It shoulde bee a hurte to manye, if an obligation should be so lightly auoyded by woꝛde, therfoze the laswe specially pꝛeuenteth that hurte vnder such maner as befoze appeareth. And yet intendeth not noꝛ commandeth not, that the money of right ought to be paide againe, but setteth a general rule which is good and necessarie to al the people, and that euery man may well keepe without it be thꝛough his owne default. And if such default happen in any person, whereby hee is without remedy at the common lawe, yet hee may be holpen by a Sub pena, and so he may in manye other cases where conscience serueth for him, that were to long to rehearse now.

D. But I pray thee shew mee vnder what maner, a manne may be holpen by conscience. And whether he shal be holpen in the same courte oz in an other. S. Because it cannot bee well declared where a man shalbee holpen by conscience & where not, but it bee first knowen what conscience is, therfoze because it pertyneth to thee moſte properlie, to treate of the nature and qualitie of conscience, therfoze I pray the that thou wilt make me some bzief declaration of the nature and qualitie of conscience, & then I shall aunswere to thy question aswell as I can.

D. I will with good wyl doe as thou saiest, and to the entent that thou maist the better vnderstande that I shall say of conscience, I shall first shewe thee what Sinderellis, is, and then what reason is, & then what conscience is, and how these thꝛee differ among them selfe, I shall somewhat touche.

¶ What

The. xiiij. Chapter.

What Sinderelis is.

The. xiiij. Chapter.

Sinderelis is a naturall power of the soule set in the hyghest parte thereof mouyng, and sterring it to good and abhorringe euill. And therfore Sinderelis neuer sinneth nor erreth. And this Sinderelis our Lord put in mā to þ intent þ the order of thynges shoulde be obserued. For after saint Dionise the wysedome of god ioyneþ the beginning of the second thinges to the last of the firste thinges, for Angel is of a nature to vnderstand without serching of reason, and to þ nature man is ioyned by Sinderelis, the whiche Sinderelis maye not wholly be extincted neither in mā ne yet in dāpned soules. But neuertheles as to the vse & exercise therof, it maye bee let for a tyme epyther throughe the darkenes of ignoraunce or for vndiscrete delectacion, or for the hardnes of obstinacy. First by the darknes of ignoraunce Sinderelis may be let þ it shall not murmur agaynste euill, because he beleueth euill to bee good, as it is in heretikes, the whiche when they die for the wickednes of their Erroure, beleue þ they dye for the verye trouth of the faythe. And by vndyscrete delectacion, Sinderelis is sometyme so ouer layde þ remorçe or grudge of conscience for the tyme can haue no place. For the hardnes of obstinacy Sinderelis is also let that it maye not stirre to goodnesse as it is in dampned soules

The. xiiij. Chapter fo. 24

soules & bee so obstinate in euill that they maye neuer bee enclined to good. And though Sinderesis may bee sayde to & point extinct in dampned soules: yet it may not bee saide & it is fully extinct to all intents. For they alway murmur against the euill of the pain & they suffer for sinne. And so it may not be sayde & it is vniuersally, & to al intentes, & to al times extinct, and thys Sinderesis is the begynning of all things that may bee learned by speculation or studie, and ministreth the generall groundes and pryncples thereof. And also of all thinges that are to be done by man, an example of suche thinges as may be learned by speculatio appereth thus: Sinderesis saith & euerye whole thing is moze then anye one part of the same thinge, and that is a sure grounde that neuer faylethe. And an example of thinges that are to bee done, or not to be done: as wher Sinderesis saith no euill is to be done, but & goodnes is to bee done and followed, and euill to bee fledde and such other. And therfore Sinderesis is called by some mē, the laswe of reason, for it ministreth the prynciples of the laswe of reason, the which be in euery manne by nature in that hee is a reasonable creature.

¶ Of reason.

¶ The. xiiij. Chapter.

When

The.xiiij. Chapter.

When the firste manne Adam was created hee receyued of God a double eye, that is to say, an outwarde eye. whereby hee myghte see vnvisibile thinges, and know his bodely enemies and eschew them. And an inwarde eye, that is the eye of the reason, whereby he myght see his spiritual enemies that fighteth agaynste his soule and beware of them. And among all giftes that god gaue to man, this gift of reason is the most noblest, for therby man pzeccelleth all beastes, and is made like to the dignitie of Angelles, discerning trouth from falsshed, and euill from good. Wherefoze he goethe farre from the effect that he was made to when hee taketh not heede to the trouth, or when hee preferreth euyl befoze good. And therefore after Doctoꝝ reason is the power of the soule, that discerneth betweene good and euyl, and betweene good & better comparynge the other: the whyche also sheweth vertues, loueth good, and fleeth vices. And reason is called righteous and good, for it is confirmable to the wyll of God, and that is the first thing, and the first rule that all thinges must be ruled by, & reason that is not righteous nor straight: but that is saide culpable, is either because shee is deceyued wth an erreure that might bee ouercome, or els throughe her pride or slouthfulnes she enquireth not for knowledge of the trouth that ought to bee enquired. Also reason is deuyded in two partes, that is to say, into the higher part & into the lower part. The higher part hideth heauenlye thinges and eternall, and reasoneth by heauenlye lawes or by

*the definition of
reason.*

*the deuydon of
reason.*

by heauenly reason what is to be done, & what is not to be done, and what thinges God commaundeth, and what he prohibiteth. And thys higher part of reason hath no regard to transitory thinges or tēporal thinges: but y sometime as it were by maner of counsel shee bringeth forth heauenly reasons to order wel tēporal thinges. The lower part of reason worketh most to gouerne wel tēporal thinges, and she groundeth her reasons much vpon lawes of man, and vpon reason of man, wherby she cōcludeth that is to be done, that is honest and expedient to the common wealth, or not to be done for it is not expedient to the common wealth. And so that reason wherby I know god and such thinges as pertain to god, belongeth to the highest part of reason. And that reason wherby I know creatures belongeth to y lower part of reason. And though these two partes, that is to say, the higher part and y lower part be one in dede essence, yet they differ by reason of their working and of their office as it is of one self eye, that sometime looketh vppward, and sometime downewarde.

Of conscience. The xv. Chapter.

This word conscience, which in Latin is called *Conscientia* is cōpounded of this preposition: cum, that is to saye in English, with, and with this nomine *scientia*, that is to say in English, knowledge, and so conscience is as much to say as knowledge of one thing & an other thig. and cōscience so taken is nothing els, but an applyinge

The derivation of conscience.

The xv. chapter.

Doctors distinctions of conscience

plying of any science or knowledge to some particular act of man. And to conscience may sometime erre & soetime not erre. And of conscience thus taken, doctoures make many descriptions, wherof one doctour saith, that conscience is the lawe of our vnderstanding. Another & conscience is an habite of the mind discerning betwixte good and euil. Another that conscience is the iudgement of reason, iudginge on the particular actes of man, al which sayings agree in one effede, & is to say that conscience is an actual applyinge of any cunning or knowledge to such things as be done, wherupon it foloweth that vpo & most perfit knowledge of any law or cunning, and of the most perfit & most true applying of & same to any particular acte of man, foloweth the moste perfit, the most pure, and the most best conscience. And if ther be default in knowing of the truth of such a law, or in the applying of the same to particular act, than therupon foloweth an error or default in conscience, as it may appere by this example. Sinderis ministreth a vniuersal principle that neuer erreth, that is to say, that an vnlawful thig is not to be doe. And then it might be taken by some man that euery oth is vnlawful because the Lord saith. What v. ye shal in no wise sweare. And yet he & by reason of & sayd wordes wil hold that it is not lawful in no case to sweare erreth in conscience, for he hath not the pfit knowledge & vnderstanding of & trouth of the said gospel, nor he reduceth not the saying of scripture, to other scriptures i which it is grated & in some case an oth may be lawful, & the cause why

Why conscience may so erre in the said case, & in other like, is because conscience is formed of a certain particuler proposition or question grounded vpon vniuersal rules ordeined for such thinges as are to be done. And because a particuler proposition is not knowen of himselfe, but must apere & be searched by a diligēt search of a reason therefore in y^e search & in the conscience y^e should be formed therupō may happē to be error, & therupon it is said y^e ther is error in conscience, which error cometh either because he doth not assent to y^e he ought to assent vnto, or els because his reasons wherby he doth referre one thing to an other, is decetued. For further declaraciō wherof it is to vnderstand y^e error in conscience cometh vnder manner of waies. First is through ignorance: & that is whā a mā knoweth not what he ought to do & than he ought to aske counsel of thē y^e he thinketh most expert in that science. wherupon hys doubt riseth. And if he can haue no counsel than he must wholly commit him to god: & he of hys goodnes will so order him, that hee will saue him from offence. The second is through negligence, as whan a man is negligent to search his owne conscience, or to enquire the trouth of another. The third is through pride, as whan hee wil not meken himselfe ne beleue them that bee better and wiser than he is. The fourth is thorough singularitie as whan a man foloweth his owne wit, & wil not confirme himselfe to other, nor folow y^e good common waies of good men. The v. is thorough an inordinat affectiō to himselfe wherby he maketh conscience to folow his desire

D.ij

and

*the cause wher
conscience may
erre.*

*how many wa-
yes error in
conscience cometh*

The xv. chapter.

& so he causeth her to go out of her right course
The sixt is throughe puslanimitie wherby som
person dzedeth oft times such things as of rea-
son he ought not to dzed. The seuēth is throughe
perplexity, and that is whē a man beleueth him
selfe to be so set betwext two sinnes that he thin-
keth it vnpossible, but that he shal fal into y one
but a man can neuer be so proplexed in dede but
throughe an errour in conscience: and yf he will
put away that errour he shalbe deliuered, ther-
fore I pray thee that thou wilt alwaies haue a
good conscience, and if thou haue so, thou shalt
alwaies be mery, and if thine own hart reproue
thee not, thou shalt alwaies haue inward peace
The gladnes of rightwise men is of god and in
god, and their ioye is alwaies in trowth & good-
nes. Ther be many diuersities of cōscience, but
ther is none better then that, wherby a mā true-
ly knoweth hi self. Many mē know mani great
& high cūning thigs, & yet know not thesels, &
truely he y knowethe not himself, knoweth no-
thing wel. Also he hath a good & cleane consci-
ence, that hath puritie and cleannes in his hart,
trowth in his worde, & rightwisenes in his dede
And as a light is set in a lanterne that al y is in
the house may be sene therby, so almighty God
hath set cōsciēce in y middes of euery reasonable
soule as a light wherby he mai discerne & know
what he ought to do, and what he ought not to
do. Therfore for as much as it behoueth thee to
be occupied in such things as pertain to y law.
It is necessary that thou euer holde a pure & a
cleane cōscience, specially in such things as cō-
cerne

*What man ha-
th a good and
cleane conscience*

cerne restitution: for the sinnes is not forgiven
but if þ thing þ is wꝛōgfully taken be restored.
And I counsel the also þ thou loue that is good
and fle that is euil, and that thou do to another
as thou wouldest should be done to thee, & that
thou do nothing to other þ thou wouldest not
should be done to thee. That thou doe nothings
against trouthe, that thou liue peaceably w thy
neighbour, and that thou do iustice to euery mā
as much as in thee is. And also that in euery ge
neral rule of the lawe, thou do obserue & keepe
equitie: & if thou do thus, I trust the light of þ
lanterne, that is thy conscience shal neuer be ex
tingued. ¶ But I pray the shew me what is
that equitie that thou hast spoken of befoze, and
that thou wouldest that I should kepe. D. I
wil with good will shew thee somewhat therof.

What is equity. The xvi. chapter.

Equitie is a rightwisenes that cōsidereth all the perticuler circumstaunces of the deede, *the distributiō of equity*
which also is tempered with þ swetnes of mer
cy. And such an equity must alway be obserued
in euery law of man, and in euery general rule
therof, and that knew he well, that saide thus.
Lawes couet to be ruled by equity. And þ wise
man saith. Be not ouer much rightwise: for the
extreme rightwisenes is extreme wꝛōg, as who
saith: if thou take al that the woꝛdes of the law
geueth the, thou shalt sōetime do against þ law.
And for the plainer declaracion what equity is
thou shalt vnderstand that lieth þ dedes & actes
D. iij. of

The xvi. chapter.

of men, for which lawes ben ordeined, happen in diuers maners infinitely. It is not possible to make any general rule of the law, but that it shal faile in soe case, & therfore makers of lawes take heede to such things as may often come & not to euery perticuler case, for they could not though they would. And therefore to folow the wordes of y^e law, were in some case both against iustice and the comon wealth: wherfore in some cases it is necessary to leaue y^e wordes of the law, and to folow that reason and iustice requirereth, and to that intent equitie is ordeined: that is to say, to temper & mitigate the rigour of the law. And it is called also by some men *Epicaia*, the which is no other thing but an excepcion of y^e law of god, or of the law of reason from y^e general rules of the law of man, whā they by reason of their generalty would in any particular case iudge against the law of God, or y^e lawe of reason, the which excepcion is secretly vnderstand in euery general rule of euery positive law. And so it appereth that equity taketh not away y^e very right, but only that, y^e semeth to be right by the general wordes of the lawe, nor it is not ordeined against the cruelnes of the law, for the law in such case generally takē is good in himself but equitie foloweth the lawe in al particular cases wher right & iustice requireth, notwithstanding that general rule of the lawe be to y^e contrary: wherfore it appeareth y^e if any law were made by a mā w^out any such exceptiō expessed or iplied it were manifestly vnrasonable & shew not to be suffered, for such cases might cōe y^e he
that

that would obserue that law should breake both the law of god and the law of reason. As if a mā make a vow & he wil neuer eate whit meat and after it happeneth him to come ther where he can get no other meat. In this case it beho- ueth him to breake his answere, for that particu- ler case is excepted secretly from his general as- swere by this equity or Epicay, as it is said be- fore. Also if a law were made in a city & no mā vnder the pain of death should opē the gates of the citie before the sunne ryling yet if & Citizē before that houre flying from their enemies cōe to the gates of & city, and one for sauing of the Citizēns openeth the gates before the houre ap- pointed by the law, yet he offendeth not & lawe for that case is excepted frō the said general law by equitie as is said before: & so it appereth that equity rather foloweth the intent of & law, then the words of the law. And I suppose that ther be in likewise some like equities groundēd vpon the general rules of the law of the realme. S. Ye verely, wherof one is this Ther is a general prohibition in the lawes of Englande: that it shal not bee lawfull to no man to enter into the freehold of an other without aucthoritie of the owner or of the law: but yet it is excepted frō & said prohibition by the law of reason & if a man driue beasts by the highe waye and the beastes happē to escape into & corne of his neighbour, & he to bring out his bests that they shoulde do no hurt goeth into & ground & fetteth out & beastes ther he shal iustifie that enter into the grounde by the law. Also not withstanding the statute

D. liij.

of

equity rather
followeth the in-
tent of & lawe
than the wordes.

of Edward the thirde made y^e xiiij. yere of hys
 reigne whereby it is ordeined that no man by o^r
 paine of imprisonmēt should geue any almes to
 any valiant begger, that is wel able to labour.
 yet if a man mete with such a valiant begger in
 so cold a wether and so light apparel, that if he
 haue no clothes he shal not be able to come to a
 ny town to haue succour, but is likely rather to
 dye by the way, and he therfore geueth him ap
 parel to saue his life he shalbe excused of y^e sayd
 statut by such an exception of the law of reason
 as I haue spoken of. D. I know wel that
 as thou saist he shalbe excepted of the said statut
 by consciēce, & ouer that, that he shal haue great
 reward of god for his good dede, but I would
 wit whether the party shalbe also discharged in
 the common law by such an exception of y^e law
 of reason or not, for though ignorance vnuinci-
 ble of a statute excuse y^e pty against god (yet as
 I haue heard) it excuseth not in the lawes of y^e
 realme, ne yet in Chauncery as sōe say although
 the case be so that the party to whom the forfai-
 ture is geuen may not with conscience leaue it.
 S. Merely by thy question thou hast put me in
 a great doubt. wherfore I pray thee geue me a
 respite therin to make thee an answer, but as
 I suppose for y^e time (howbeit I wil not fullye
 affirme it to be as I say) but it should seme y^e he
 should wel plede it for his discharge at y^e cōmon
 law, because it shalbe taken that it was y^e intēt
 of the makers of the statut to except such cases.
 And the iudges may many times iudge after y^e
 minde of the makers as farre as the letter may
 suffer

suffer & so it semeth they may in this case. And diuers other exceptions there be also frō other general groundes of the lawe of the realme by such equitie, as thou hast remēbred befoze that were to long to rehearse now. D. But yet I pray thee shew me shortly sōewhat more of thy mind vnder what maner, a mā may be holpē in this realme by such equity. S. I wil with good wil shew thee somewhat therein.

In what maner a man shal be holpē by equitie in the lawes of England.

The xvij. chapter.

First it is to be vnderstand there be in many cases diuers excepcions frō y general grouds of y law of y realm by other reasonable grouds of the same law, whereby a man shalbe holpē in the common law, as it is of this general groud, that it is not lawfull for no man to enter vpon a discent, yet for the reasonableness of the law excepteth from that ground an infāt y hath righte and hath suffered suche a discent & him also that maketh continual claime and suffreth thē to enter, notwithstanding the discent. And of that excepcion they shal haue auantage in the cōmon law, and so it is likewise of diuers statutes, as of the statute whereby it is prohibited, y certein perticuler tenants shal doe no wast, yet if a lease for terme of yeres be made to an infant that is within yeres of discrecion, as of the age of vi. or vii. yeres, and a strāger do wast, in this case this infant

*Page 31. 14. and
in the margin*

The xvii. chapter.

infant shal not be punished for the wast, for hee
is excepted & excused by the law of reason. And
a woman couert to whom such a lease is made
after y couerture shalbe also discharged of wast
after her husbandes death by a reasonable max-
ime and custome of the realme. And also for re-
paraciōs to be made vpon the same ground, it is
laweful for such particuler tenants to cutte
downe trees vpon the same ground to make re-
paracions. But the cause ther as I suppose is
for that the mind of the makers of the said esta-
tute shalbe taken to be that, that case should bee
excepted. And in al these cases y parties shalbee
holpen in the same court & by the cōmon law, &
thus it appereth that some what a man may bee
excepted fro the rigor of a maxime of the law by
another maxime of the law. And sometime fro
the rigor of a statute by the lawe of reason, and
sometime by the intent of the makers of the sta-
tute, but yet it is to be vnderstand that most cō-
monly, wher any thing is excepted from the ge-
neral customes or maximes of the lawes of the
realme. By y lawe of reason the pty must haue
his remedy by a writ that is called Sub pena.
If a Sub pena lye in y case, but wher a Sub
pena lieth, and wher not, it is not our intent to
treate of at this time. And in some case ther is
no remedy for such an equity by way of cōpuls-
ion, but all remedy therin must be committed to
the conscience of the partye. D. But in case
wher a Sub pena lieth to whom shal it bee dy-
rected, whether to the iudge or to the party.
S. It shal neuer be directed to the iudge, but
to

ff. Nat. 62. 59

see fo. 31. after.

to the party plaintife or to his attourney & ther
 vpon an Injunction commanding them by y
 same vnder a certain paine therin to be contay=
 ned that he proceede no further at the common
 law, til it be determined in the kings chauncery
 whether the playntife hath the tytle in conscy=
 ence to recouer or not. And when the playn=
 tife by reason of suche an injunction ceaseth to
 aske any farther processe, the iudges wil in like
 wise ceasse to make any farther processe in that
 behalfe.

D. Is there any mencion made in the lawes
 of England of any such equities. S. Of thys
 terme equitie to the intent that is spoken of here
 there is no mencion made in the lawe of Eng=
 land, but of an equitie deriued vpon certeine sta=
 tutes mencion is made many times and ofte in
 the law of England. But that equity is al of a=
 nother effect then this is, but of the effect of this
 equity that we now speake of, mencion is made
 many times, for it is ofte times argued in y law
 of England wher a Sub pena lieth and wher
 not: and daily billes be made by mē learned in y
 law of the realme to haue Sub penas. And it is
 not prohibited by the law, but y they may well
 do it so that they make thē not, but in case wher
 they ought to be made and not for vexacion of
 y party, but according to y trouth of the matter.
 And the law wil in many cases that ther shalbe
 such remedy in the chauncery vpo diuers thigs
 grounded vpon such equities, and than the lord
 Chaunceller must order his conscience after the
 rules and groundes of the lawe of the realme,

The xvii. chapter.

in so much that it had not bene inconuenient to haue assigned such remedy in the chauncery vpo such equities for the seuen groundes of the law of England, but for as muche as no record remaineth in y^e kings court of no such bil ne of the writ of Sub pena or iniunction y^e is sued therevpon, therfore it is not set as for a special ground of the law, but as a thing that is suffred by the law. D. Then sith the parties ought of righte in many cases to be holpe in the chauncery vpo such equities. It semeth y^e if it were ordeined by statute, y^e ther should be no remedy vpo such equities in y^e chauncery nor in none other place, but that every matter should be ordered only by the rules and groundes of the commo law, that y^e statut were against righte & conscience. S. I think the same, but I suppose there is no suche statute. D. There is a statute of that effecte, as I haue hearde say, wherein I would gladly here thy opinion. S. Shewe me that statute and I shal with good wil saye as mee thinketh therein.

Whether the statute hereafter hehearded
by the Doctour be against conscience
or not.

The xviij. chapter.

There is a statute made in the iij. yere of king Henry the fourth, the xxij. Chapter, wherby it is enacted that iudgement geuen in y^e kinges courtes, shal not be examined in the chauncerie,
Parlia=

Parliament. noz els where, by which statute is appeareth that if any iudgement be geue in the kings courtes against an equitie or against any matter of conscience, that ther can be had no remedy by that equitie, for the iudgement can not be resourmed without examinacion, and the examinacion is by the said statute prohibite, wherfoze it semeth that the said statut is against conscience, what is thine opinion therein. S.

If iudgementes geuen in the kings courtes should be examined in the chauncery befoze the kings counsel or in any other place, the plainetifes or demaundats should seldome come to the effect of their suite, ne y law should neuer haue ende. And therfoze to eschew that inconueniēce y statute was made. And though perauenture by reaso of that statut, some singuler pson may happē to haue lost. Neuerthelesse the said statut is very necessary to eschew many great vexacions & iniuste expēces y would els come to many plaintifs that haue rightwisely recovered in y kings courtes. And it is much moze prouided for in the law of Englad that hurt noz damages should not come to many than only to one. And also the said statut doth not prohibite equitye, but it prohibiteth onely the examinacion of the iudgement for the eschewing of the inconueniēce befoze rehearsed. And it semeth that the said statut standeth with good conscience. And in many other cases where a man doth wrongs yet he shal not be compelled by way of compulsion to resourme it, for many times it must be left to the conscience of the party, whether he wil redress

see fo. 22. before.

see fo. 29. before

The xviii. chapter.

dzesse it or not. And in such case he is in cōsciēce
 as wel bounde to redzesse it if hee wil saue his
 soule, as he were if he were compellable thereto
 by y^e law as it may apere in diuers cases y^e may
 be put vpon the same ground. D. I pray thee
 put some of these cases to an example. S. If
 the defendant wage his law in an actiō of debte
 brought vpon a true debt, the plaintife hathē no
 meanes to come to his debt by way of cōpulsio
 neither by Sub pena nor other wise, and yet y^e
 defendant is bounde in conscience to pay hym.
 Also if y^e graūd Jury in attaint affirme a false
 verdit, geuen by the pety Jury ther is no fur-
 ther remedy but the conscience of the party. Also
 wher there can be had no sufficient prooffe, ther
 can be no remedy in the chauncery, no more thē
 ther may be in the spiritual court. And because
 thou hast genē an occasion to speke of cōsciēce I
 would gladly here thy opinion wher consciences
 shalbe ruled after the law, & wher the law shal-
 be ruled after cōscience. D. And of that matter
 I would likewise gladly here thy opiniō, speci-
 ally in cases groundēd vpon y^e lawes of Englād
 for I haue not herd but litle therof in time past
 but b2foze thou put any cases therof: I would
 that thou wouldest shew me how those ij. que-
 stions after thy opinion are to be vnderstande.

¶ Of what lawe this question is to bee vnder-
 stande: that is to say, wher cōsci-
 ence shalbe ruled after y^e law.

The xix. chapter.

The

The law wherfore mencion is made in this question, that is to say: wher conscience shall be ruled by the law, is not as me seemeth to be vnderstand only of the law of reason, and of the law of God, but also of the law of man, that is not contrary to the law of reason, nor the law of god, but that it is superadded vnto them for the better ordering of the common wealth, for such a law of man is alwaies to be set as a rule in conscience, so that it is not lawfull for a man to goe fro it on the one side ne on the other for such a law of man hath not only the strength of mans law, but also of the law of reason, or of the law of God wherof it is deriued, for lawes made by man which haue receiued of god power to make lawes be made by God. And therfore conscience must be ordered by that law, as it must be vpon the law of god and vpon the law of reason. And furthermore that law wherof mencion is made in the latter end of the chapter nexte before that is to saye, in that question wherein it is asked wher the law is to be left and forsaken for conscience, is not to be vnderstande of the lawe of reason nor of the law of god: for the two lawes may not be left, nor it is not to be vnderstand of the law of man that is made in particuler cases, and that is consonant to the law of reason, and to the law of god, and that yet that law should be left for conscience, for of such a lawe made by mā conscience must be ruled, as it is said before, nor it is not to be vnderstand of a lawe made by mā cōmāding or phibiting any thing to be dōe & is against the law of reason or & law of God.

For

For if any law made by man, binde any pson to any thing that is against the said lawes, it is no law, but a corruption and a manifest errour. Therefore after them that be learned in y^e lawes of England, the said questiō: that is to say wher the law is to be left for conscience & where not is to be vnderstand in diuers maners, and after diuers rules as hereafter shal somewhat be touched.

¶ First many vnlearned parsons beleue that it is lawfull for them to do with good conscience al things which if they do them, they shal not be punished therfore by the law, though y^e lawe doth not warrant them to do that they doe, but onely when it is done doth not for some reasonable consideracion punish him that doth it, but leaueth it onely to his conscience. And therfore many persons do oft times that they should not do, and kepe as their own that, that in conscience they ought to restore. Whereof there is in the lawes of England this case.

¶ If two men haue a woode iointly, and the one of them selleth the woode and keepeth al the money wholly to himself. In this case his felow shal haue no remedy against him by the law, for as they when they tooke the woode iointly put ech other in trust, and were cōtented to occupy together, so the law suffreth thē to order y^e profits therof according to the trust that ech of thē put other in. And yet if one take al the profits, he is bound in conscience to restore the halfe to his felow, for as the law giueth him right onely to halfe y^e land, so it geueth him right onely in conscience

science to y halfe profit. And yet neuerthelesse it can not be saide in y case, that the lawe is against conscience, for the lawe nether willeth ne commaundeth y one shoulde take al the profits but leaueth it to their conscience, so that no default can be found in the lawe, but in him that taketh al the profits to himself may bee assigned default, which is bound in conscience to refozme if he wil saue his soule, though he cannot be compelled therto by y lawe. And therfore in this case and other like, that opinion whych some haue, that they maye do with conscience al y they shal not be punished for by the lawe if they doe it, it is to be left for conscience, but y lawe is not to be left for conscience.

¶ Addition.

¶ Also many men thinke y if a man haue lande y another hath title to, if hee y hath the ryghte shall not by the accyon y is geuen hym by the lawe to reconer hys right by: reconer damages y then hee that hath the lande is also dyscharged of damages in conscience, and y is a greate error in conscience, for though he cannot be compelled to yelde the damages by no mas lawe, yet he is compelled thereto by the lawe of reason, & by the lawe of God, wherby we be bound to do as we would be done to, & y we shall not couet our neighbors good. And therfore if tenat i tail be disseased & the disseisor dieth sealed, & then the heire in y taile bringeth a formedon & reconereth y land & no damages, for y lawe geueth him no damage in y case, yet y tenant by conscience is bounde to yeld damages to y heire in tail fro y death

The xix. Chapter.

of his aūcester. Also it is taken by some men, & the law must be left for conscience wher the law doth not suffer a man to deny & hee hathe before affirmed in court of record, or for that hee hathe wilfully excluded himself therof for some other cause, as if the daughter & is onely heire to her father, will sue livery with her sister that is a bastard, in & case shee shal not be after receiued to say that her sister is bastarde, in so much & if her sister take half the land with her, ther is no remedy against her by & law. And no moze ther is of diuersitie in other estopels, which were to long to reherce now. And yet & party & may take auantage of such an estoppel by & law is bound in conscience to forsake & aduantage, specially if he were so estopped by ignorance, & not by hys own knowledge & assent, for though the lawe in such cases geueth no remedy to him that is estopped, yet the law iudgeth not that & other hath right vnto the thing that is in variance, betwixt them.

C Also it is to vnderstand & & law is to be left for conscience, wher a thing is tried and found by verditte agaynst the trowth, for in & common law the iudgement must be genen according as it is pleaded & tried like as it is in other laws, that the iudgement must be geuen according to that that is pleaded & proued.

C And it is to vnderstand & the law is to be left for conscience, wher & cause of the law doth cease for whē the cause of the law doth cease, & lawe also doth cease in conscience, as appereth by this case hereafter folowing.

C Addicion.

A man maketh a lease for term of life & after a stranger doth wast, wherfore the lessee bringeth an action of Tress and hath iudgment to recover damages having regarde to the treble damages & he shal yelde to him in & reuerſiō. And after he in the reuerſion befoze action of wast standeth dieth: so & the acciō of wast is therby extited then the tenant for terme of life (though he may sue execution of the said iudgment by the law (yet he may not do it by consciēce, for in consciēce he may take no more then he is hurted by the sayd trespassse, because he is not charged ouer wyth & treble damages to his lessour.

Also it is to vnderstand wher a law is grounded vpon a presumption, for if the presumption be vnttrue, then the law is not to be holden in consciēce. And now I haue shewed thee somewhat how & question, & is to say: where the law shal be ruled after consciēce. I pray thee shew mee whether there be not lyke diuersities in other lawes, betwixte lawe and consciēce. D. Yes verelye, verelye many whereof thou hast recyted one befoze. wher a thing & is vnttrue is pleaded & proued, in whiche case iudgement must be geuen according as well in the lawe Ciuille, as in the lawe Canon. And an other case is & if the heire make not his inuentory, he shal be bounde after the lawe Ciuille to al the debts though the goods amount not to so much. And the lawe canon is not against that lawe, and yet in consciēce the heire which in the lawes of Englands is called an executor is not in & case charged to the debts, but according to & value of the goods.

E. ij.

And

The xx. Chapter.

And now I pray thee shew me s^oe cases wher
cōscience shalbe ruled after the lawe. S. I wyll
with good wil shew thee somwhat as me thin-
keth therein.

There foloweth diuers cases where cōscience
is to be ordered after the lawe.

The .xx. Chapter.

The eldest sonne shall haue and enioy his fa-
thers landes at the common lawe in conscy-
ence, as he shal in y^e lawe. And in Burghenglische
y^e yonger sonne shal enioy the inheritaunce, and
y^e in conscience. And in Gavelkind al the sōnes
shal inherite the land together as daughters at
the cōmon lawe and y^e in conscience. And there
can be none other cause assigned why conscience
in the first case is with the eldest bzether, and in
the seconde wyth the yonger bzether, and in the
third case with al the bzethzen. But because the
lawe of Englāde by reason of diuers customes
both sometime geue the lande wholly to y^e eldest
sonne, sometime to the yongest, and sometyne
to all.

Also if a manne of his mere mocid make a fel-
femēt of two acres of land, lyng in two seuerall
shires, & maketh liuery of season in the one acre
in the name of both. In this case the fesse hath
right but onely to y^e acre wherof liuery of seasō
was made, because he hath no title by the lawe:
but if both acres had ben in one shire he had had
good right to both. And i these cases y^e diuersity
of the lawe maketh the diuersity of conscience.

Also

Also if a man of his mere mocion make a feoffment of a maner & saith not to haue & to hold &c with the appurtenaunces, in þ case the feffe hath right to the demesne landes and to þ rents if there be atturment and to the common parcelling to the maner, but he hath neither ryghte to þ aduowsons appendant if any be, nor to the villeins regardant, but if this terme with thappurtenances had beene in þ deede, the feffe had right in conscience aswel to the aduowsons and villeins, as to the residue of the maner, but if þ king of his mere mocion geue a maner with the appurtenaunces, yet the donee hath neither right in law nor conscience to the aduowsons nor villeins. And þ diuersitie of the law in these cases maketh the diuersitie of conscience.

Also if a man make a lease for terme of yeres yelding to him and to his heires a certayne rent vpon condicion, þ if the rent bee behynde by .xl. dayes &c. þ then it shalbee lawfull to the lessour & his heires to reentre. And after the rent is behinde the lessour asketh the rent accordinge to þ law & it is not payed, the lessour dieth his heires entreth. In this case his enter is lawful both in law & conscience: but if the lessour had died before he had demaunded the rent, and his heir demaunded þ rent, & because it is not payed he reentreth, in þ case his reentre is not lawfull nother in law nor in conscience.

Also if the tenat in dower lose her land & die before the corne be ripe, þ corne in conscience belongeth to her executors, & not to him in þ reuerlion: but otherwise it is in conscience of grasse &

E. ij

fruites

ad quod no
rentat par
p. 27

The xx. Chapter.

Fruites. And the diuersitie of the lawe maketh there also the diuersitie in conscience.

Also if a man sealed of landes in his demesne as of fee, bequetheth the same by his last will to another and to his heirs and dieth. In this case the heire notwithstanding the wyl hath righte to the lande in conscience. And the reason is because the law iudgeth that will to be void, and as it is void in the law, so is it void in conscience.

Also if a man graunt a rent for terme of life & make a lease of land to y^e same grauntee for terme of life, & the tenant alieneth both in fee. In this case he in the reuerſion hath good title to y^e lande both in law and conscience and not to the rente. And the reason is because the land by the alienacion is forfeit by the law to him in the reuerſion & not the rent.

¶ Addition.

Also if Landes be geuen to two men & to a woman in fee, and after one of the men entermarrieth with the woman, and alieneth the lande & dieth. In this case the woman hath right but on ly to the third part, but if the man & the woman hath ben married together before the first feffement, then the woman notwithstanding the alienacion of her husband should haue had right in law and conscience to the one halfe of the land. And so in these two cases conscience doth follow the law of the realme. Also if a man haue two sonnes one before spouſels & another after spouſels, and after the father dieth sealed of certain lands. In that case the yonger sonne shal inioy the landes in this realme as heire to his father
bothe

The. xx. Chapter fo. 36

both in law & conscience. And y^e cause is because
 y^e sone borne after spousels, is by the law of this
 realme y^e very heire, & y^e elder sone is a bastard,
 And of these cases & many other like in y^e laws
 of Englād may be formed y^e Silogisme of con-
 sciēce oz y^e true iudgement of cōscience in this ma-
 ner. Siderelis ministreth y^e maior thus. Right
 wisenes is to be done to euery mā, vpo which
 maior y^e law of Englād ministreth y^e maior th^o.
 The inheritance belōgeth to the sonne borne af-
 ter spousels, & not to the sone borne before spou-
 sels, thē cōscience maketh y^e conclusion, & sayth:
 therfore the inheritance is in cōscience to be ge-
 uen to the sonne borne after spousels. And so in
 other cases infinite may be formed by the law &
 Silogisme oz the right iudgement of consciēce,
 wherfore they that be learned in the lawe of the
 realme say y^e in euery case where anye lawe is
 ordeined for the disposicion of lands & goodes,
 which is not agaynst the law of God nor yet a-
 gainst y^e law of reasō, y^e the law bindeth all thē
 y^e be vnder the law in the court of conscience, y^e
 is to say, inwardly in his soule. And therfore it
 is somewhat to maruell y^e spirituall men haue
 not indeuored thēselues in times pāste to haue
 more knowledg of y^e kīgs laws thē they haue
 done, oz y^e they yet do, for by the ignorance ther-
 of they be oft times ignoraunt of that y^e shoulde
 order them accordyng to right and iustice, aswel
 concerning themselues as other y^e come to them
 for cōsail. And now for asmuch as I haue an-
 swered to thy questiōs aswel as I cā: I pray
 thee y^e thou wilt shew me thy opinion in diuers

E.iiij.

cases

*What lawe agre
 ethe with to
 ence.*

The.xxj. Chapter.

cases formed vpon the law of England wherein
I am in doubt, what is to be holden therein in
conscience. D. Shew me thy questions & I wyl
say as me thinketh therein.

The first question of the student.

The.xxi. Chapter.

If an infant that is of the age of. xx. yere and
hath reason and wisdom to gouern himself
selleth his land & with the money therof buyeth
other land of greater value then the first was, &
taketh the profits therof, whether may that in-
fant ask his first land again in conscience, as he
may by the lawe. D. What thynkest thou in
this question. S. Me seemeth & forasmuche as
the law of England in this article is grounded
vpon a presumption, that is to saye, & infant
commonly afore they be of the age of. xxi. yeres
be not able to gouerne themselves, & yet for as-
muche as & presumption sayleth in this infant
& he may not in this case wth conscience aske
the lande againe & hee hath solde to his greate
auantage as before appeareth D. Is not this
sale of the infant & the fessement made therup^o
if anye were voydable in the lawe. S. Yes be-
relye D: And if the fessie haue no ryghte by
the bargain, nor by & fessement made thereupon
wherby shoulde hee then haue righte thereto as
thou thinkest. S. By conscience as mee thin-
keth for the reason that I haue made before. D
And vpon what law shoulde that conscience be
grounded

The.xxi.Chapter fo.37

grounded, & thou speakest of, for it cannot bee grounded by the lawe of & realme, as thou hast sayd thy selfe, And mee thinketh & it can not be grounded vpon the law of god, nor vpon & lawe of reason, for feoffementes nor contracts be not grounded vpon neither of those lawes, but vpon the law of man. S. After the lawe of propertie was ordeined, the people might not cōueniently liue together without contracts, and therfore it seemeth & contractes bee grounded vpon & lawe of reason, or at leaste vpon the lawe & is called *Ius gentium*. D. Though contracts be grounded vpon that Lawe & is called *Ius gentium*, because they be so necessary and so generall among al people, yet that proueth not & contractes be grounded vpon the law of reason, for though & law called *Ius gentium* be much necessary for & people yet it may be chaūged. And therfore if it were ordeined by statute & there should be no sale of land, ne no cōtract of goods And if any were & it shoulde bee voyde, so that euery man shoulde cōtinue stil seased of his lāds & possessed of his goods, the statute were good. And then if a man agaynste & statute solde his lands for a somme of money, yet the seller might lawefullye retayne his lande accordinge to the statute. And then hee were bounde to no more but to repaye the moneye & hee receyued wyth reasonable expences in that behalfe, and so in lyke wyse me thinketh that in this case the infant may wth good conscience reenter into his firste land, because the contract after the Max-
pmes of the lawe of the Realme is voyde, for
as

The .xxij. Chapter.

As I haue heard y^e maximes of the law be of as great strength in the law as statutes. And some thinketh that in this case the infant is bound to no more, but only to repay the money to hym y^e he sold his lād vnto, with such reasonable costs and charges as he hath sustained by reasoⁿ of the same. But if a man sel his land by a sufficient & lawful contract though there lacketh liuerye of seasoⁿ or such other solemnities of the law, yet the seller is bound in conscience to perfo^rme the contract, but in this case the contract is insufficient, & so me thinketh great diuersitie betwixte the cases. S. For this time I hold me cōtented with thy opinion.

The second question of the Student.

The .xxij. Chapter.

I f a man that hath landes for terme of life be impanelled vpon an inquest, & thereupon lea-
seth issues & dieth, whether may those issues bee
leuied vpon him in the reuerſion in consciēce as
they may bee by the law. D. If they may be le-
uied by the law, what is y^e cause why thou dost
doubt whether they may bee leuied by consciēce
S. For there is a maxime in the laws of Eng-
land, that where two tytles runne together, the
eldest title shalbe preferred. And in this case the
title of him in the reuerſion is before the title of
the forfeiture of y^e issues. And therfore I doubt
somewhat whether they may be lawfully leuied
D.

The xxij. Chapter fo. 38

D. By that reason it seemeth thou art in doubt what the law is in this case, but that must necessarily be knowen, for els it were in vain to argue what conscience wyll therein. S. It is certain that the lawe is suche and so it is likewise if the husbände forfeit issues and dye, those issues shal be leuied on the lands of the wyfe. D. And if the law be such it seemeth that conscience is so in likewise, for sith it is the law & for execution of Justice euery manne shalbe impanelled whē nede requireth, it seemeth reasonable, & if he wil not appeare & he should haue some punishment for his not appareance: for els the law should be clerely frustrate in y point. And the paine as I haue heard is & he shall lese issues to the kyng for his not appareance, wherfore it seemeth not in conuenient nor against conscience though y lawe be & those issues shal be leuied of him in the reuerſion, for that the condicion was secretly vnderstand in y law to pas with y lease when the lease was made. And therfore it is for the lessor to beware & to preuent y danger at y making of y lease, or els it shalbe adiudged his own default. And than this particuler maxime wherby such issues shalbe leuied vpon him in y reuerſion is a particuler exception in the law of England from y general maxime & thou haſte remembred before, & is to say, & where two titles run together, y the eldest title shalbe preferred, & so i this case y general maxime in this point shal hold no place, nother in law nor in conscience, for by this particuler maxime y strength of y general maxime is restrained to euery intēt, & is to saye, as wel in law as in conscience.

The

The. xxiiij. Chapter.

The third question of the student.

The. xxiij. Chapter.

I f a tenāt for terme of life, or for terme of ye= res do wast wherby they be bound by y^e lawe to yeld to him in the reuerſion treble damages. and ſhal alſo forſit y^e place waſted: whether is he alſo bound in cōſcience to pay thoſe damages, & to reſtoze the place waſted immediatly after the waſt done, as he is in y^e ſingle damages, or y^e he is not bound therto till the treble damages and place waſted be recouered in the kings courte? **D.** Before iudgement geuen of the treble da= mages and of the place waſted he is not bound in conſcience to pay them. For it is vncertayne what he ſhould pay, but it ſuffiſeth y^e he be redy til iudgemēt be geuē to yeld damages accordig to the value of the waſt, but after y^e iudgement geuen, he is boundē in conſcience to yelde y^e tre= ble damages, and alſo the place waſted. And y^e ſame law is in al ſtatutes penal, y^e is to ſay, y^e no man is bound in cōſcience to pay the penalty tyl it be recouered by the law. **S.** Whether may hee y^e hath offended againſt ſuch a ſtatute penal de= ſende the accyon and hinder the iudgement to the intent he ſhould not pay y^e penalty, but one= ly ſingle damages. **D.** If the accyon be taken rightwiſely according to the ſtatute and vpon a iuſt cauſe the defendaunt maye in no wiſe de= ſende the accion, vnleſſe he haue a true dilatory matter to pleade, whiche ſhoulde be hurteful to him if he pleaded not, though hee be not bounde to

The. xxiiij. Chapter fo. 39

to pay the penalty till it be recovered.

The fowerth question of
the Student.

The. xxiiij. Chapter.

If a manne infeffe other in certaine lād upon
condicion & if hee infeffe anye other: that it
shalbe lawfull for the feoffour and his heires to
reëter &c. Whether is this cōdicion good in cōsci
ence though it be voyde in the lawe **D.** What
is the cause why this condiciō is void in & law
S. The cause is this, by the lawe it is incident
to euery state of fee simple, & hee that hath the
estate may lawfully by the law & by the gifts of
& feoffor make a feoffemēt therof. And the whē
& feoffor restraineth him after & hee shall make
no feffemēt to no man againste his owne former
graunt, & also against the purtie of the state of
a fee simple, the law iudgeth the condicion to be
void, but if the condicion had ben that he should
not haue enfeffed such a manne, or suche a man
that condicion had bene good, for yet he might
infeffe other.

D. Though the saide condicion bee agaynste
the effede of the state of a fee simple, and also a-
gaynste the lawe. Neuertheles it is not against
the intent & the parties agreed vpon and that
at the time of the livery. And for as muche as
the intent of the partye was that if the fesse in-
feffed any mā of the land, & the feffours should
enter, and to & intent the fesse toke the state and
after

Postea 124. a.
Vlesto 5084
21. H. 7. 8. a. B.

The.xxiiij. Chapter

after breake the intent, it seemeth & the land in conscience should retourne to the feoffour. S.

The intent of the parties in the lawes of England is void in many cases. & is to saie, if it bee not ordred according to the law. And if a mā of his me. e motion without any recompence intending to geue lands to an other and to his heires make a dede vnto him, wherby he geueth him & landes to haue and to hold to him for euer intending that by & worde (for euer) the lessee should haue & land to him and to his heires, in this case his intent is voide, and the other shall haue the lād only for terme of life. Also if a mā geue lāds to another & to his heires for terme of .xx. yerres intendynge & if the lessee dye wpythin the terme & than his heires should enioy the lande during the terme. In this case his entēt is void, for by the law of the realme al chatels real and personal shal go to the executors, and not to the heire. Also if a man geue lands to a manne and to his wife, and to the third parson intending & euery of them should take the thirde part of the lande as. iij. cōmon parsons should, his entēt is voide for & husbād & & wife as one parson in & law shal take onely & one half & the third parson & other half, but these cases be alway to be vnderstand where the saide estates be made without any recompence. And for as muche as in this princypall case, the intente of the feoffour is grounded agaynst the lawe: and that there is no recompence appointed for the feoffement: me thinketh & the feoffour hath neyther right to the land by lawe or cōscience, for if he should haue it by cōscience

The. xxiiij. Chapter fo. 40

ence & conscience should bee grounded vpon the law of reason and & it cannot, for condicions be not grounded vpon the law of reason, but vpon the maximes & customes of the realm. And therfore it might be ordeined by statut, & al condicions made vpon land should be voide. And whā a condicion is voide by the maximes of the law, it is as fully void to euery entēt as if it were made voide by statut, & so me thinketh & in this case the feoffour hath no right to the land in law nor in conscience. D. I am content thy opiniō stand till wee shall haue hereafter a better leysure to speake farther in this matter.

The fift question of the student.

The. xxb. Chapter.

If a fine with Proclamacion be leuied according to the statut, and no claime made with in five yerres &c. whether is the right of a stranger extincted therby in conscience, as it is in the law. D. Upon what consideration was that statute made. S. That the ryghte of landes and tenements myght bee the more certaynely known & not to be so vncertain as they were befoze that statute Doctour. And when anye lawe of man is made for a cōmon welth, or for a good peace & quietnes of the people, or for any incōueniēce or hurt to be saued from them, that lawe is good though percase it extinct & ryght of a stranger and must be kept in the courte of
con=

The. xxv. Chapter.

conscience for as it is said before in the fowerth chapter. By lawes rightwisely made by manne, it appeareth who hath right to the lands & goods for whatsoever a man hath by such a law he hath it rightwisely. And whatsoever hee holdeth against such a law he holdeth unrightwisely. And furthermore as it is sayde there, al lawes made by man which be not contrary to the law of god must be observed and kept, and in conscience.

And hee that despyseth them, despyseth GOD and hee that resisteth them, resisteth GOD, also it is to be vnderstande, that possessions, and the right thereof be subiect to the lawes, so that there therefore with a cause reasonable may be translated and altered from one manne to another, by the acte of the lawe. And of this consideracyon that lawe is grounded that by a contract made in faires and markets, the property is altered except the property bee to the king, so that the buyer pay tolle, or doe suche other thyngs as is accustomed there to bee done bypon suche contractes and that the buyer knoweth not the former property. And in the lawe Civile there is a like law that if a man haue another mannes good wyth a title. iij. yere, thinking that hee hath the right to it, hee hath that very right vnto the thing, and that was made for a law to that entet that the property & right of things should not bee vncertaine: and that variance & strife should not bee among the people. And forasmuche as the saide statute was ordered to geue a certainty of title in the landes and tenements comprized in the fyne. It seemeth that fine extincted that title of al other, as well in
con-

The xxvi. chapter. fo. 4r

conscience as it doth in y^e law. And sith I haue answered to y^e questiō I pray the let me know thy minde in one question concerninge tayed landes, and than I wil trouble thee no farther at this time.

A questiō made by the Doctour, how certain
recoveries y^e be vsed in the kings courtes to
desete tailed land may stande
wth conscience.

The xxvi. chapter.

I haue heard say that whan a man that is seysed of landes in the taile selleth the lande, That it is commonly vlsed that he that buieth y land shal for his suertie, & for y auoiding of the taile in that behalfe, cause some of his frindes to recouer the said lands against the saide tenāt in taile: which recouery as I haue bene credably enforzmed shalbe had in this maner: y demaundantes shal suppose in their wozit & declaraciō y the tenant hath no entre, but by such a straūger as the buyer shal liste to name & appoint, where in dede the demaundantes neuer had possession therof nor yet the said straūger. And thereupon the said tenant in taile shal appere in the court, & by assent of the parties, shal vouche to warrāt one that he knoweth wel hath nothing to yelde in value, And y vouch shal appeare & the demaundantes shal declare against him, and thereupon he shal take a day to enparle in the same terme and at that day by assent & couen of the ptyes

The xxvi. chapter.

he shal make default vppon which default bee-
cause it is a default in despite of the court, the
demaundantes shal haue iudgemēt to recouer
against the tenant in taile, and he ouer in value
against the vouche and this iudgement and re-
couerie in value, is taken for a barre of y^e taile
for ever. how may it therefore be taken, & y^e law
standeth with consciēce, that as it semeth allow-
eth and fauoureth such fained recoveries.

S. If the tenaunt in taile sell the lande for
a certein summe of money as is agreed betwixt
them at such a price as is commonly vsed of other
lands, & for the suertie of the sale suffreth suche
a recouerye as is aforesaide, what is the cause
that moueth thee to doubt whether the said con-
tract or the recovery made thereupō: for y^e suer-
ty of the buier & hath truely paid his mony for
the same, should stand with conscience,

D. Two thinges cause me to doubte therein
one is for that, & after our Lorde had geuen y^e
land of behest to Abraham & to his seede, & is to
say, to his children in possessiō alway to cōtinue
he said to Moyses as it appeareth Leuiti. xxb.
the land shal not be solde for ever, for it is mine,
And than our Lord assigned a certeine manner
how the land might bee redeemed in the yeare
of Iubilie if it were solde before: and for asmuch
as our Lord woulde that the lande so geuen
to Abraham and his children should not be sold
for ever, it seemeth that he doth againste the en-
sample of God that alieneth or sellth the lande
that is geuen to him and to his children as lāds
entailed be geuen.

Another

The xxvi. chapter. fo. 42

Another cause is this: it appeareth by the commaundement of God that thou shalt not couet the house of thy neighbour &c.

And if the cōcupiscēce be prohibited, more strōger thē ¶ vnlawful taking & withholding thereof is prohibited, and for asmuch as taylor land whan the auncester is deade, is a thing that of right is belonginge to his heire. for that hee is heire according to the gift, how maye the lande with right or conscience be holden from him?

S. Notwithstanding the prohibition of almighty God: whereby the lande that was geuen to Abraham and to his seede might not bee aliened for euer, yet landes within walled towncs mighte lawefullye bee aliened for euer except the landes of the Leuites as it appeareth in the said Chapter of Leuitici xxb. And so it appeareth that the said prohibiciō was not generall for euerye place and that amonge the Iewes. And it appeareth also that it was geuen onely for Abraham and his children, and so it was not generall to al people. And it appeareth also that it extended not but onely to the land of promission as it appeareth by the words of the saide Chapter, where it is saide thus, al the region of your possession shalbe solde vnder the condicion of redeming, whereby appeareth that landes in other countries bee not bounde to that condicion, and as they be not bounde to that condicion: by the same reason it folowetho ¶ they be not bound to ¶ same successiō. Therefore that said law that will ¶ the land geuen to Abraham & to his seede shal not be sold for euer

F. ij. bindeth

The xxvi. chapter.

bindeth no land out of the lande of promission,
and some men wil say that sithen the passion of
our lord was promulgate and knowen, it bin-
deth not there. And to the second reason whiche
is grounded vpon the commaundement of God.
It must needes be graunted & it is not lawfull
to any mā vnlawfully to couet the house of his
neighbour, and & thā moze stronger he may not
vnlawfully take it from him: but thā it remay-
neth for thee yet to proue how in this case this
tailed land that is solde by his auncester, and
wherof a recovery is had recozded in the kings
court may be said & lands of the heire. ¶ That
may be proued by the law of the realme, that is
to say by the statut of westminster the secōd the
first chapter wher it is said thus. The will of
the geuer expzessely contained in the dede of his
gift shalbee from henceforth obserued, so & they
to whom the tenementes bee so geuen shal not
haue power to alien. but that the landes after
theire deathe shall remaine to the yssue or re-
tourne to the donoure if the issue faile by the
which statut it appeareth euidently & though
they to whom the tenements were so geuen ali-
ened them away, that yet neuerthelesse they in
law and conscience by reason of the said statute
ought to remain to their heires accoꝝdinge to &
gyfte, for it is holden commonlye by all Doc-
tours that the commaundementes and ru-
les of the lawe of man or of a positive lawe
that is lawfullye made, bynde al that bee sub-
iectes to that lawe accoꝝdinge to the mynde of
the maker and that in the courte of conscience.

¶

S. Doest thou thinke that if a manne offend against a statut penal that hee offendeth in conscience? admitte that hee doe it not of a wilfull disobedience for that hee wil not obey the lawe, for if hee doe it of dysobedience I thinke he offendeth. **D.** If it bee but onely a statute that is called Populare it byndeth not in conscience to the paymente of the penaltie, tyll it be recovered by the lawe. And than it doth binde in conscience, but if a statute be made principally to remedye the hurte of the partye, and for that hurt it geueth a penaltie to the partye in that case the offendoure of the statute is bounde immediatly to restore the damages to the valew of the hurte: as it is vpon the statute of waste, but the penaltie aboue the hurte hee is not bounde to paye tyll iudgement bee geuen as it is sayde befoze, but statutes by the whiche it is assigned who shall haue righte or propartye to these landes and tenements, or to these goodes or cattelles if it be not against the law of God nor againste the law of reason bynd al them that bee subiecte to the lawe, in lawe and conscience, and suche a statute is the statute of westminster the second whereof we haue treated befoze, wherefoze it must bee obserued in conscience.

S. But some holde that the statute of westminster the second was made of a singularity and presumption of many that were at the saide parliament for exalting & magnifying of their own bloude & therfoze they say that that statut made by such a presumption bindeth not in conscience

The xxvi. chapter.

D. It is verpe perilous to iudge for certeine that the said statute was made of suche a presumption as thou speakest of, for ther be many considerations to proue that the saide statute was not made of such a presumption, but rather of a very good minde of all the parliament, or at y least of the moze part thereof, and for the common wealth of al the realme, and first in the king the which in the said parliament was the heade and most chiefe and principlal parte of the parliament as he is in euerye parlyamente, can not bee noted no suche entent. For it is not necessarie nor it was not than in vse that lades of the Crowne should be entailed, and in spiritual men ne yet in certeine Burgeses and Citizens of the said parliament which at that time had no lande there can bee noted no suche singularitie, nor yet in the noble men and gentlemen nor suche other as were of the sayde parlyamente and had landes and tenementes. It is not good to iudge in certeine that they did it of suche a presumption, but it is good and expedient in this case as it is in other cases that be in doubte to holde the surer waye, & that is that it was made of charitie, to that intent that hee nor the heires of him to whom the lande was geuen should not fall into extreme pouerty & there by happely to runne into offence against God, and though it were true as they saye that it was not made of charitie but of presumption and singularitie as they speake of. Neuerthelesse for as much as y statute is not against the law of god nor against the law of reaso it must be

bee obserued by all them that be subiectes vnto that law. For as Thon Gerson saith in y^e treatise y^e he intituled in latine. De vita spirituali anime: y^e fourth lesson, & y^e third corollary: saith y^e God wil that makers of lawes iudge onely of outward thinges and reserue secret thynges to him. And so it appeareth that man maye not iudge of the inward intent of the deede, but of such thinges as bee apparaunt and certaine, it is that it is not apparaunt that there was anye such corrupte intent in the makers of y^e said statute, how may it therfore be said that, y^e law is good or rightwise, that not only suffereth suche thinges against the statute, but also againste the commaundement of God. S. To that some aunswere & saye, that when the land is solde & a recouerie is had therupon in the kings courte of record y^e it suffiseth to barre the taile in conscience, for they say y^e as the taile was first ordeined by the law, so they say that by y^e law it is adnulled againe. D. We thou thy selfe iudge if in that case there be like authoritie in y^e making of the taile as there is in the adnulling thereof, for it was ordeined by authoritie of parliament, the which is alway taken for the most highe court in this realme before any other, and it is adnulled by a false supposel for y^e, that they y^e bee named demandants should haue right to the land wher iⁿ trouth they had neuer right therto, wher vpon foloweth a false supposel in the writ, and a false supposel in the declaraciō & a voucher to warrant by conyn of such a parson as hath nothing to yeld in value, and thereupon bycouyne

The xxvi. chapter.

and collusion of the parties foloweth \S default
of the vouche, by the which default \S iudgemēt
shalbe geuen. And so al the iudgemēt is deriued
and grounded of \S vntrue supposel and couin of
 \S parties, wherby the law of the realme \S hath
ordeined such a wozit of entre to helpe thē \S haue
right to lands oz tenementes is defrauded. the
court is deceiued, the heire is disherited, and as
it is to doubt \S buier & the seller & theire heires
and assignes hauing knowledge of \S taylor bee
bound to restitution, & verely I haue heard ma
ny times, \S after the law of \S realme such reco
ueries should be no barre to \S heire in \S taile, if
the law of the realme might be therein indyffe
rently heard. **S.** I cannot see but \S after \S law
of the realme it is a barre of the taile, forz whan
 \S tenant in taile hath vouched to warrantye, &
 \S vouche hath appeared & entred into the war
rantye, & after hath made default in despite of \S
court, wherupon iudgmēt is geue for \S demaū
dant against \S tenant, & forz the tenant \S he shall
reouer in value against the vouche. if the heire
in \S taile should after bring his formedō & reco
uer \S lāds entailed, & after \S vouche purchaseth
landes, than should the heire also haue execuciō
against him to \S value of \S landes entailed as
heire to his auncester \S was tenant in the firste
acciō, & so he should haue his owne lands, & al
so the lands recovered in value, and therfore be
cause of \S presumption that the vouch may pur
chase landes after \S iudgemēt, some be of opiniō
that it is in the law a good barre of the taile.

D. I suppose that in that case thou hast put
that

that the vouche maye barre the heire in taile of his recovery in value because he hath recovered the first lands. Neuerthelesse I wil take a respite to be aduised of that recovery in value. And yf thou can yet shew me any other consideraciō why the said recoveries should stand with conscience. I pray thee let me heare thy cōcept therin for the multitude of the said recoveries is so great that it were great pity that al that should be bound to restitution that haue lands by such recoveries, sith there is none that as farre as I canne here, disposeth them to restore.

S. Some men make an other reason to proue that the saide recoveries should bee sufficient by the law to auoid the statute of west. than and if they be sufficient thereto, they be sufficient in cōscience. D. What is their reason therein S. In the vij. yere of king Henry the vij. the iij. chapter among other thinges it is enacted, that all recoverers their heires and assygnés maye auow and iustifye for rentes, seruices, and customes by them recovered, as they againste whom they recovered might haue done. And then they saye & whan the parliament gaue to such recoverers authoritie to auow and iustifye for suche rentes customes and seruices as they recovered, & the entent of the parliamente was that such recoverers should haue right to that: for the which they should auowe or iustifye for els they saye & it should bee in vayne to geue them such power, & & the pliamēt shoulde els be takē in maner as fortifiers of wrogful title & so they say & such recoverers by reaso of & said

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said statute haue right by the lawe. D. That statute as it seemeth was made onely to geene to the recouersers a feurme to aduowse & iustifie which they had not before though they had recovered vpon a good title. And the cause why they had no forme to aduowse or iustifie before the said statute was, for as much as the recouersers did not by the pretence of theirre accion affirme the possession of him or them against whom they recovered, nor claimed not by them, but rather disaffirmed & destroyed their estate. And therefore they can not alledge any continuance of their title by the, as they may that haue rents or seruices, or such other of the graunt of other by dede or by fine. And therfore as it semeth the most principal intent of the statute was & suche recouersers should aduowse and iustifie for rents seruices and customes as they should or might do that had them by fine or dede not hauing any respect as it semeth whether they recovered against tenant in fee simple or in fee taile, nor whether the recoveries were had vpon a rightful title. And therfore as me semeth & said statut neither affirmeth nor disaffirmeth & title of recoveries wherby they do auow, for if a man had right before the recoverie & right should remaine vnto him notwithstanding the said statut, & so me semeth that the title of them that haue the lands entailed by such recoveries is nothing fortified nor affirmed by the saide estatute but that they are in the same case as they were before, what thinkest thou therin? S. This matter is great for as thou saist there be so many & haue tailed landes

*the cause why
recouersers
had no forme to
aduowse before
the statute
of 7. h. 8. m.
4.*

lands by such recoveries, that were great ppyte & heauines to condempne so many persones & to iudge that they al were bound to restitution. For I think there be but few in this realm that haue lands of anye notable value, but that they or theire auncestoures, or some other by whom they claime, haue had parte thereof by suche recoveries. In so muche that Lordes spirituall and temporall, Knightes, Squyres, riche men and pooze, Monasteries, Colledges and Hospitales haue suche lands, for such recoveries haue ben vsed of long tyme, who maye thinke therfoze without greate heauynesse that so manye men should be bounde to restitution and that yet as thou saiest, no man dysposethe him to make restitution. And so I am in a manner perplexed and wote not what to say in this case but that yet I trust that ignoraunce maye excuse many parsones in this behalfe.

D. Ignoraunce of the deade maye excuse, but ignoraunce of the lawe excuseth not, but it be inuincible, that is to say that they haue done that in the is to knowe the truth as to counsaile with learned men. and to aske them what the law is in that behalf, & if they aunswere them that they may do this or that lawfully, than they be ther by excused in conscience, but yet in mans lawe they be not thereby discharged, but they that haue taken vpon the to haue knowledg of the law be not excused by ignoraunce of the law, ne no moze are they that haue a wilful ignoraunce and that would rather be ignorant than to knowe the trouthe, And therfoze they will not dispose them to aske

The xxvi. chapter.

aske any counsaile in it, & if it be of a thing that
is against the law of God or the law of reason,
no man shalbe excused by ignozance, and so ther
be but few that be excused by ignozance. **S.**
what than shal we condēpne so many & so nota
ble men. **D.** we shal not cōdēpne thē but wee
shal shew them their peril. **S.** yet I truste that
their dainger is not so great that they should be
bound to restitution. For Ihon Gerson saith
in the said booke called *De unitate ecclesiastica*
consideracione secunda, quod communis error
facet ius: That is to say a common error ma
keth a right, of which wordes as it semeth some
trust may be had, & though it were fully admit
ted the sayde recoveries were firste had bypon
an vnlawful ground and against the good order
of conscience that yet neuerthelesse forasmuche
as they haue ben bled of long time so that they
haue bene taken of diuers men that haue ben
right wel learned in manner as for a law, that
the buyers partly be excused so that they be not
bounde to restitution. And mozeouer it is cer
tain that, that statute of west. the seconde nor
none other statute made by manne can not be of
greater vertue or strength, then was the bound
of matrimony that was ordeined of God. And
though that bound of matrimony was indissol
uble, yet neuerthelesse Moyses suffred a bill of
refusel of 5 Jewes, which in latin is called *Li*
bellum repudiij, and so they mighte thereby for
sake their wiues. As it appeareth *Deutro. xxiij*
and therefore lik as a dispensacion was suffred
against that bound, so it semeth it may be against
this

this statute. D. As to that reason that thou hast last made of a bill of refusel, let al purchasours of land heare what our lord saith in y^e gospel to the Jewes of that bil of refusel. Math. xix. where he saith thus, to the hardnesse of your heartes. Moyses suffred you to leaue your wines, for at y^e begining it was not so, of which wordes Doctours hold commonly that though such a bil of refusel was lawfull so y^e they that refused their wiues therby, should be with out paine in the law, that yet it was neuer lawfull so that it should be without sinne. And so likewise it may be said in this case that such recoveries be suffered for the hardnes of the hartes of English men, which desire land & possessions so so great greedines that they can not bee wythdrawen from it neither by the law of God nor of the realme. And therfore the riche mē should not take the posselliōs of pooze men frō thē by power wthout colour of title, that is to saye y^ether by open disseison, or by the only sale of the tenant in taile, and so to hold them againste the expresse wordes of the statute, such recoveries haue bene suffered. And though for their great multitude they may happely be without payne as to the lawe of the realme: yet it is to feare that they be not without offence as against god and as to thy other reason that a common error should make a right, those wordes as me semeth be to be thus vnderstād, y^e a custōe v^sed against y^e law of man shalbe taken in some countries for law if the people be suffered so to continue. And yet some meune cal suche a custome an erreure because

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because that the continuance of that custome against the law was partly an error in the people for that they would not obey to the law that was made by their superiours to the contrary of that custome, but it is to be vnderstand that the said recoveries though they haue bene longe vsed may not be taken to haue strength of a custome, for manye as well learned as vnlearned haue alway spoken against them & yet doe. And furthermore as I haue heard say a custome or a prescription in this realme against the statutes of the realme preuaile not in y law.

S. Though a custome in this realme preuaileth not against a statute as to the law, yet it semeth that it may preuaile against y statute in cōsciēce for though ignorance of a statute excuseth not in the law, neuerthelesse it may excuse in conscience & so it semeth that it may do of a custome.

D. But if such recoveries cannot be brought into a lawfull custome in the lawe, it seemeth they may not be brought into a custome in conscience for conscience must alway bee grounded vpon some lawe, and in this case it cannot bee grounded vpon the lawe of reason, nor vpon the lawe of God: and therefore if the lawe of man serue not, there is no ground wherevpon conscience in this case may be grounded, & at the beginninge of suche recoveries they were taken to bee good because the law shoulde warrant them to be good and not by reason of anye custome, and so if the reason of the lawe wyll not serue in the recoveries the custome can not helpe, for an euill custome is to bee put away

waye. And therefore me semeth that the recoveries bee not without offence againste God, though happely for their great multitude, and that there should not bee as it were a subversion of the inheritance of manys in thys realme as well of spiritual as tempoꝛal: they be without paine in the lawe of the realme : excepte such recoveries as by the common course of the lawe be voidable in the lawe by reason of some blesse or of some other speciall matter, but what paine that is I wil not temerously iudge, but commit it to the goodnes of our Lorde whose iudgements be very deepe and profounde, nor I wil not fully affirme that they þ have lands by suche recoveries ought to bee compelled to restitution, but thys seemeth to me to bee good counsaile, that euery man hereafter holde þ is certein and leaue that is vncertain, and þ is þ he kepe himselfe from such recoveries, and than he shalbe free from al scrupulousnes of conscience in that behalfe.

S. It semeth that in this question thou ponderest greatly the said statut of westm, þ second and that thouge it bee but onely a lawe made by man, þ yet for as muche as it is not againste the lawe of reason, nor the lawe of God, thou thinkest that it muste bee holden in conscience, and ouer that as it seemethe thou arte somewhat in doubte whether those recoveries bee anye barre to the heire in the tayle by the lawe of the realme vnlesse that hee haue in value in deede vpon the voucher, and that thou
wylte

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Wilt thereupon take a respite oz thou shew thy
ful minde therein, and in likewise thou thinkest
as I take it that those recoveries can not bee
brought into a custome but that the longer that
they be suffered to continue yf they be not good
by the law the greater is the offence against god
And therfore thou ponderest little that custome
but yet thou agreest that it is good to spare the
multitude of them that be past, least a subuersi-
on of y^e inheritāce of many of this realme might
folow and great strife and variāce also: if they
should be adnulled for the time past: except ther
be any other special cause to abyde them by the
law as thou haste touched in the last reason, but
thou thinkest that it were good that from hence
forth such recoveries should be clerely prohy-
bite & not be suffered to bee had in vse as they
haue beene before, and thou counsailest all men
therefore to refrain them selfe from such recou-
ries hereafter. D. Thou takest well that I
haue said and accoꝝding as I haue ment it. S.
Now I pray thee sith I haue heard thy questi-
on of these recoveries accoꝝdinge to thy desyre
that thou wouldest aunswere me to some parti-
cular questions concerning tailed lands, wher-
of thou hast at this time geuen vs occasion to
speake. D. Shew mee those questions and I
wil shew thee my mind therin with good wil.

The first question of the Student
concerninge tailed landes.

The xxvij.

The.xxvij.Chapter. fol.50

If a disseisour make a gift in the tail to John at Stile and John at Stile for the redeming of the title of the disseisur, agreeth wth hym that he shal haue a certaine rent out of the same land to him & to his heirs, and for the suerty of y^e r^et it is deuised y^e the disseisur shal release his right in the land &c. and y^e suche a recouerye as wee haue spoken of befoze shalbe had against y^e sayd John at Stile to the vse of the payment of the said rent and of the former taile, whether standeth y^e recoverye wel with conscience or not as thou thinkest. **D.** I suppose it dothe for it is made for the strength and suertye of the taile which the disseisur might haue clerely defeated & auoyded if he woulde, & therfore as I thynke if the said John at Stile had graunted to y^e disseisur only by his deede a certaine rent for the releasing of his title, y^e graunte shoulde haue bound the heires in the taile for euer. And then if y^e disseisur for his moze suertie will haue suche a recoverye as befoze appeareth it seemeth y^e recoverye standeth with good conscience.

S. It semeth y^e thy opinion is righte good in this matter. And so it appcareth y^e with a reasonable cause some pticuler recoveries may stand both by law & conscience to barre a taile

The second question of the student concerning tailed landes.

The.xxviij.Chapter.

G.l.

It

The xxviij. Chapter

I f a tenant in taile suffer a recovery against him of the lands entailed to y^e intent y^e the recoverers shal stand seyled therof to the vse of a certain womā whō he entendeth to take to hy^s wife, for terme of her life, & after to the vse of y^e first tail, & after he marieth y^e same womā, whether standeth that recovery wth cōscience though other recoveries vpon bargaines and sales byd not:

D. It seemeth yes, for though the statute bee that they to whom the tenements bee so geuen, should not haue power to alien, but that y^e lāds after their deeth should remain to their issues or reuert to the donors if the issues failed: yet if he to whom the lands were so geuen take a wife & dieth seyled without heire of his body, & the donour enter, the woman shal recouer against him the third part to hold in the name of her dowry for terme of her life, though the taile be determined, & the same law is of tenant by the curtesy: y^e is to say of him that happeneth to marry one y^e is an inheritrix of the land entailed, & they haue issue, the wife dieth, and the issue dieth, he shall holde the lands for terme of his life as tenant by the curtesye, notwithstandinge the wordes of the statute, whiche saye that after the deathe of the tenant in taile withoute issue the landes shal reuert to the donour, and I thinke y^e cause is because the intent of that statut shall not bee taken y^e it intended to put away such titles as the law should geue by reason of the tayle, and so it seemeth that a like entente of the statute shall be taken for iointours, for els the statute myght

The.xxviij.Chapter. fol.51

myght be somtyme a letting of matrimony, and it is not like \bar{y} the statut intended so, & therfore it semeth that by the onely dede of the tenaunt in taile a iointour may be made by the intent of the statut, though the wordes of the statut serue not expresse for it, for many times the intent of \bar{y} letter shalbe taken & not the bare letter, as it appeareth in the same statut where it is saide \bar{y} he to whom the lands be geuen shal haue no power to alien, yet the same statute is construed \bar{y} neither he nor his heires of his body shal haue no power to alien, & so me thinketh \bar{y} such an intent shalbe taken here for sauinge of iointours.

S. Trough it is \bar{y} sometime \bar{y} intent of a statut shalbe taken farther than \bar{y} expresse letter stretcheth, but yet ther may no intent be takē against the expresse wordes of the statut, for \bar{y} shoulde be rather an interpretation of \bar{y} statut than an explication and it cannot be reasonably takē, but \bar{y} the intent of the makers of the sayde statute was \bar{y} thz lande shoulde remaine continually in the heirs of the taile as long as the taile endureth, & ther can no iointour bee made neither by dede nor by recouery, but that the tail must ther by bee discontinued, and therefore this case of iointour is not like to the said cases of tenāt in dower or tenant by the curtesy, for \bar{y} title of dower and of tenauncy by the curtesye growethe moſte ſpecyallye by the continuance of the possession in the heires of the taile but it is not so of ioyntoures, and therefore by the onely dede of the tenant in the taile there maye no iointour be lawfully made against the expresse wordes

The xxix. Chapter.

of the statut. And if there be any made by waye of recovery, then it semeth & it must bee put vnder the same rule as other recoveries must be of landes entayled.

The third question of the student concerning tailed lande.

The. xxix. Chapter.

I f John at Moke being seised of lāds in fee. of his mere mocion make a feoffment of certayn landes to the intent & the fessees shall there of make a gift to y^e said John at Moke to haue to him and to his heires of his bodye, and theye make the gift accordyng. And after the said John at Moke falleth into debt, wherfoze he is taken & put in prison, and thereupon for payment of his debtes he selleth the same land & for suertye of y^e buier he suffreth a recovery to be had agaynst him in such maner as before appereth. Whether standeth that recovery with conscience oz not?

D. I would here make a litle digression to aske thee another questiō oz that I make answer to thine: & is to say: to feele thy mynde howe that law by the which the bodye of the debtoz shalbe taken and cast into prison there to remain til he haue payde the debte may stand with conscience, specially if he haue nothinge to paye it with, for as it seemeth if hee wil relinquish his goods, which in some lawes is called in Latin Cedere bonis, that he shal not be imprisoned, and & is to be vnderstād most specially if he be fallē into povertye

The. xxix. Chapter fo. 52

pouertie and not through his owne default. **S.**
 There is no lawe in this realme & the defen-
 dant may in any case Cedere bonis, and as me
 seemeth if ther were such a lawe it should not be
 indifferent. for as to the knowledge of hym &
 the money is owing to & debtour might Cedere
 bonis, & is to say relinquish hys goods, and yet
 retaine to himselfe secretlye greate riches. And
 therfore & lawe in such case semeth more indiffe-
 rent and rightuouse & commiteth such a debtoz
 to the conscience of the pleinetife to whom the
 money is owing then & committing hym to the
 conscience of hym & is the debtour, for in the
 debtour, some defaulte maye be assigned, but in
 him to whom the money is owing may bee as-
 signed no default. **D.** But if hee to whom the
 debt is owing, knoweth & the debtour hath no-
 thing to pay the debt with and & he is fallen in
 to the pouertie by some casualtie, and not thro-
 rough his owne default both & lawe of Englad
 holde & he may with good conscience keepe the
 debtour still in prison till hee bee payde. **S.**
 May verely: but it thinketh more reasonable to
 appoint & libertie & the iudgement of consciēce
 in & case to the debt thē to the debtoz, for & cause
 before reherfed. And then the debt if he knowe
 the trouth is as thou hast said bound in conscy-
 ence to let him go at libertie though hee bee not
 compellable thereto by the lawe. And therefore
 admitting it for this time, & the lawe of Eng-
 lande in thys point is good and iuste, I praye
 thee & thou wilt make answere to my question

G ij.

D.

The.xxix.Chapter.

D. I wil with good will, & therfore as me seemeth for asmuch as it appeareth & the saide gift was made of the meere libertie & freewill of the said Ihon at Moke, and without any recompence & therfore it cannot be otherwise takē but & the intent of the said Ihon at Moke as wel at the time of the said feoffment, as at the time the hee received again the said gift in the taile was, & if hee happened afterwards to fall into pouertie, & hee might aliene the said land to relieue him &c, for howe may it bee thought & a man wil so muche ponder the wealth of his heire & hee wyll forget himself, and so it seemeth & not onely the said recovery standeth &c conscience, but also if he had made onely a feoffment of the land, the feoffment should be in conscience a good barre of the taile, but if the said feoffment and gift had ben made in consideration of any recompence of moneye or for any matrimony or such other, then the feoffment of the said Ihon at Moke should not bind his heire, & if he thā suffered any recovery therof, the recovery should be of like effect as other recoveries whereof wee have treated before, and for which I said it was good to fauour rather for their multitude then for the conscience, and the same lawe is & if the sonne and the heire of the sayde Ihon at Moke in case the sayde gyfte was made without recompence aliene the lande for pouerty after the death of hys father, the recovery bindeth not but as other recoveries dooe, for it cannot bee thoughte & the intent of the father was that anye of hys heires in taile shoulde for anye necessitye dysheryte all other heirs

heires in taile & should come after him, but for himselfe me thinketh it is reasonable to iudge in such maner as I haue said befoze.

S. And though the intent of the saide John at Moke when he made the saide feoffement, and when he toke againe the saide gift in taile: were that if hee fell in neede & he might alien: yet I suppose & he may not alien though the percase for the moze suerty he declared his entent to be such vpon the liueries of season: for that intent was contrary to the gift & he freely tooke vpon hym and when any intent or condicio is declared or reserved against the state & any man maketh or excepteth: the such an intent or condicion is void by the law, as by a case that hereafter foloweth will appeare, & is to say if a man make a feoffement in fee vpon condicion that the feoffe shall not alien it to any man, that condicion is void for it is incident to euery state of the fee simple that hee & is so seyled may alien. And lyke as in a fee simple there is incident a power to alie, so in a state taile there is a secret intent vnderstand in the gift, that no alienacion shalbe made And therefore though the entent of & said John at Moke were & if he fell into ponertye that hee might sel: and though hee at the taking of the gift openly declared his intent to bee so: yet the intent should be boyd by the law as me semeth, and if it be void by the lawe, it is also void in conscience, and so the said recouerie must bee taken in this case to be of the same effect as recoveries of other lades intailed be & in none other maner.

debat fo. 39.

The.xxx.Chapter.

The fowerth question of the student
concerning recoveries of inheri-
tance entayled

The.xxx.Chapler.

If an annuitie be graūted to a man to haue &
to perceiue to the graunte and to the heirs of
hys bodye of the cofers of hys grauntour. And
after the graūt suffreth a recovery against hym
in a writ of entre by the name of a rente in dale
of lyke summe as the annuitie is of, wyth vou-
chers and iudgment after the common course, &
both parties intende & the annuitie shall bee re-
couered: whether shall & recovery bind the heire
in the taile of his annuitie.

D. What if it were a rent goyng out of land?
What effect should the recouere be than: **S.**

It shoulde be then of lyke effecte as if it were
of lande. **D.** And so it seemeth to bee of thys

annuitie, for as me thinketh a rent and annuitie
bee of one effect, for the one of them shalbe payd
in ready money as the other shall. **S.** That is

trouth and yet there bee many great diuersities
betwixt them in the law **D.** I pray thee shew

me some of those diuersities. **S.** Part I shall
shew thee, but I wote not whether I cā shew

thee al, but first thou shalt vnderstand that one
diuersitie is this. Euerie rente bee it rente ser-

uice, rent charge, rent secke, is goynge oute of
land, but an annuitie goeth not out of any lande
but chargeth onely the persone, & is to saye the
grauntour or his heires & haue asses by discent,

*diuersities betwixt
rent annuitie &
rent*

oz the house if it be graunted by a house of religion to perceiue of their cofers. Also of an annu-
 itie there lyeth no accion but onely a wryt of an-
 nuitie against the grauntour his heires oz suc-
 cessours, and y^e wryt of annuities lyeth neuer a-
 gainst the pernour but onely against the graun-
 tour oz his heirs, but of a rent the same accions
 may lye as do of land as the case requireth, & it
 lyeth sometime of rent against the tenant of the
 ground. and sometime against the pernour of y^e
 rent, y^e is to say agaynst him y^e taketh the rente
 wrongfully, and sometime against neither: as of
 a rent seruice assise may lye for y^e lord against
 the mesne & the disseilour oz sometime against y^e
 mesne only if he did also y^e disseal. Also an an-
 nuities is neuer taken for an assise because it is
 no frehold in y^e law, ne it shal not bee put in exe-
 cucion vpon a statut marchaunt, statute staple,
 ne elegit as a rent mape: And because the sayde
 wryt of entre lay not in this case of this annu-
 itie. And y^e it cannot bee entented in the lawe
 to bee y^e same annuities, though it be of like sume
 with y^e annuities, ne though the parties assented
 & ment to haue y^e same annuities recovered by the
 said wryt of entre, therfore the said recovery is
 boide in lawe & conscience, but if such a recovery
 be had of rent wth a voucher ouer, then it shalbee
 taken to be of like effect as recoveries of landes
 be in such maner as we haue treated of before.

The fifth question of the student
 concerning tailed
 landes.

The

The. xxxj. Chapter.

The. xxxi. Chapter.

I f landes be geuen to a man and to his wyfe in the name of her iointour by the father of hys husbände to haue and to holde to them & to the heires of their two bodies begotten, and after they haue issu & the husband dieth and the wife alieneth hys land & against the statut of. xi. h. vij suffreth a recovery therof to be had against her to the vse of the buyer, & after her sonne & heire apparaunt hys heire to the taylor releaseth to the recouersers by fine & dyeth hauing a brother on liue, & after the mother dieth, who hath right to the land, the buier or hys brother of him hys released: D. what is thine opinion therein, I praye thee shew me: S. We semeth hys the buier hath ryght, for by the saide statut made in hys xi. yere of king Henry the. vij among other thynges it is enacted hys if any woman which hath lands of the gift of her husband or of the gift of anye of the auncelours of the husband suffer any recovery thereof against her by couin, hys then suche recovery shalbe void and hys it shalbe lawfull to him hys should haue the land after the deathe of the woman to enter and it to hold as in his first right, provided alway hys that statut shall not extend where he that shoulde haue the lande after the death of the woman is agreable to any such alienacion or recovery, so hys that agreement be of record. And for as much as hys heire in thys case agreed to hys said recovery by fine, whiche is one of hys highest records in the lawe it seemeth hys the buyer hath ryght: e againste that heire hys agreed and

¶ against al þ̄ shalbe heire of the taile, and that not onely by the said recovery, but also by þ̄ said statut wherby the said recovery & assent of the heire is affirmed.

D. Though þ̄ buyer in this case haue right during the life of the heire þ̄ released, yet neuertheless after his death his heir as it semeth may lawfully enter, for the agrement wherof þ̄ statut spekech must as I suppose either be had before the recovery, or els at the time of the recoverye for if a title by reason of the said statut bee once deuolute to the heire in þ̄ taile, then the right as it semeth cannot be extinct nor put away by þ̄ only fine of þ̄ heire, no more then if hee had died & þ̄ next heire to him had released to the buyer by fine, in which case the release could not extynct the right of the taile, nor the ryghte of entre þ̄ is geuen by the statut, and so as me seemeth his next heire may therfore enter.

S. As I perceiue al thy doubt is in this case because the assent of þ̄ heire was after the recovery, for if it hadben at the time of the recovery as if the heire had been vouched to warrant in the same recovery and he had entred: and thereupon the iudgement had ben geuen thou agreeest wel, þ̄ recovery shoulde haue auoided the rayle for ever.

Doctoure. That is true, for it is in expresse wordes of the statute, but when the assente is after the recovery, then me thinketh it is not so, ne that the righte of the firste taile, whyche was reuyued by the sayde statute shall not bee extinct by hys fine, no more than it shall in other

The xxxj. Chapter.

other taylor. S. I will bee aduised vpon thy opinion in this mater, but yet one thing would I moue farther vpon this statute and þ is thys. Some saye þ by this statute all other recoveries þ haue beene had ouer beside these recoveries of iointours be affirmed, for they say þ sith þ Parliament at þ making of this statut knewe well þ manye other recoveries were then vlsed and had to defeat tails, and þ it was like þ they would so continue, which neuertheles the Parliament dyd not prohibite for the time to come as it did the said recoverie of ioyntours, that it is therefore to suppose þ they thoughte that theye should stand with lawe and conscience: but because iointours were made rather for þ sauynge of the inheritance of the husbände, then to destroy the inheritaunce, they say þ the Parliament thought and adiudged the alienacions and recoveries of such iointours to be against the lawe & conscience, & not the alienacions of other landes entayled, for if they had they say, þ the Parliament would haue auoyded recoveries of taylor landes generally as wel as it did of recoveries of iointours. D. As to that oppynion I wil answer thee thus for this time, þ though that the makers of the sayd estatut onely put away recoveries of iointours, and not other recoveries þ yet it cannot be taken therfore þ their intent was þ the other recoveries shoulde stande good & perfect, for they spake than onely of iointours because there was no complaint made in the Parliament at þ time, but againste recoveries had of iointours, and therefore it semeth þ theye

The. xxxj. Chapter fo. 56

they intended nothing concerning other recoveries, but \bar{y} they should be of the same effecte as they were before & no otherwise. And that wyl appeare moze plainely this, though \bar{y} makers of the said estatute intended to put away and ad-
nail such recoveries as should bee made of ioyntours after a certaine day limited in the statute that yet they intended not to auoyde ne affyrme such recoveries of iointours as were passed before \bar{y} time: and if they intended not to auoyde ne affirme \bar{y} recoveries had of iointours before \bar{y} time, than how can it bee taken \bar{y} they intended to put away or affirme other recoveries \bar{y} were passed before that time & not of iointours \bar{y} woulde not affirme ne put away recoveries passed of iointours before that time. And so as it seemeth they intended to spare the multitude of them that were passed of both, and not to comfort any to take them after that time. \bar{S} . I am content thy opinion stand for this time & I wil aske thee another question.

C The sixt question of the student concerning tailed landes.

The. xxxij. Chapter.

I f tenaunt in taylor be disseysed, and dye & an auncester collateral to the heir in taylor release with a warrantye and dye, and the warrantye descendeth vpon \bar{y} heire in the tail, whether is he there

The. xxxij. Chapter

thereby barred in conscience, as he is in the law
D. Because your principall intent at this time
is to speake of recoveries & not of warranties,
& also because it hath been of long time takē for
a principall maxime of the lawe & it shoulde bee
a barre to the heires as well & claimeth by a fee
simple as by state taile, & for that also & it was
not put away by the said statut of Westm the se
cond which ordained the taile, I wil not at thys
time make thee an answer therin, but will take
a respite to be advised.

S. The I pray thee yet oz we depart shew me
what was the most principall cause that moued
thee to moue this question of recoveries had of
tailed lāds. D. This moued me therto, I haue
perceiued many times that therbe many diuers
opiniōs of those recoveries, whether they shād
with conscience oz not, and & it is to doubt that
many persōs run into offēce of cōscience therby.
And therefore I thought to feele thy minde in
them whether I could perceiue & it were clere,
& they serued to breake the taile in law and con
science, oz that it were clerely against conscience
so to breake the taile, oz that it were a matter in
doubt, & if it appeared a matter in doubt, oz that
it appeared that the matter were vled clerely
against conscience, then I thought to doe some
what to make the matter appeare as it is. to the
intent that they & haue the rule & the charge o
uer the people as wellle the spirituall menne as
tempozal men, shoulde the rather endeouour them
to see it reformed for the common wealth of
the people, as well in bōdye as in soule . For
when

The. xxxij. Chapter fo. 57

When any thing is vsed to þ displeasure of god it hurteth not onely the bodye but also the soule. And tempoꝛal rulers haue not onely cure of þ bodies, but also of the soules, & shal aunſwer for them if they perishe in their default: & because it seemeth by the moze apparant reason þ þ tailles be not broken ne fully auoided by þ said recoueries, & that yet neuertheles the great multitude of them that be passed is right much to be pondered. Therfoze it were very good to prohibite them for time to come, to put away such ambiguities & doubtess as rise nowe by occasion of þ said recoueries, & so they be put as snares to deceyue the people, and so wil they be as long as they be suffered to cōtinue. And me thinketh verely þ it were therfoze right expedient þ tyled lāds shoulde from hencefoze eyther bee made so strong in þ law that the tail shoulde not be broke by recovery, fine with proclamacion, collaterall warraunt, noz otherwise, oz els that all tyleds shoulde be made fee ſiple, so that euery mā that list to ſel his land, might ſel it by his bare feoffement and without any scruple oz grudge of cōscience: & than there shoulde not be so greate expences in the lawe noz so great variance among the people: ne yet so great offence of consciēce as there is now in many parsons. **S.** Merely mee thinketh that thy opinion is right good and charitable in this behalf. And that þ rulers be bound in conscience to loke wel bpō it to ſe it reformed & brought into good order. And verely by that thou haſt ſaid therin thou haſt brought me into remembraunce that there bee diuers like snares concerning

The. xxxij. Chapter

concerning spiritual matters suffered among the
peple wherby I doubt þ many spiritual rulers
be in gret offence against God. As it is of þ point
þ the spiritual men haue spoken so much of, the
priesters should not be put to aunswer before lay
men specially of felonies & murders, & of the sta
tut of. xlv. E. iij. þ. iij. chapter. wher it is saide þ
a prohibiciõ shal lie wher a mā is sued in the spi
ritual court for tithe of wood, þ is aboue the age
of xx. yere, by þ name of Silua cedua as it hath
done before, & they haue in opẽ Sermons & in di
uers other opẽ cõmunicatiõs & cõsailles caused
yt to be opely notified & knowẽ þ they shoulde
be al accursed þ put priests to aũswer, oz þ mai
taine the said estatut oz any other like to it. And
after when they haue right wel perceiued þ not
withstandynge all þ they haue done therein, yt
hath ben vñed in the same points thzough al the
realme in like maner as it was before. Thẽ they
haue set stil & let the matter passe, & so whẽ they
haue bzought many persons in great daunger,
but most specially thẽ þ haue geuen credence to
their saying, & yet by reason of the olde custome
haue done as they did before, then ther they left
thẽ but verely it is to feare þ ther is to the selfe
right great offence therby, that is for to saye to
see so manye in so great daunger as theye saye
theye bee. And to dooe nse moze to bzynge
them oute of it then theye haue done for if it be
true as theye saye, they ought to sticke to yt
with effect in all charitie till it weare refozmed,
And if it be not as they say then they haue cau
sed manye to offende that haue geuen credence
to

to them and yet contrary to their own cōsciēce do as they did befoze, & that percase should not haue offended if such sayings had not bene. And so it semeth that they haue in these matters don either to much or to little.

And I beseeche almighty God that some good man may so cal vpon al these matters that wee haue now commoned of, so that they that bee in authozitie may some what ponder the, & to order them in such maner that offence of cōscience grow not so lightly thereby hereafter as it hath done in times past. And verely he that on the crosse knew the pze of mans soule will hereafter aske a right straight accompt of rulers for euery soule that is vnder them and that shal perishe thzough their default.

¶ Addicion.

Thus haue I shewed vnto thee in this little Dialogue how the law of England is grounded vpon the law of Reason, the lawe of God, the general customes of the realme, and vpon certein principles that be called maximes, vpon the particuler customes vsed in diuers Cyties and countries, & vpon statutes which haue ben made in diuers parliamētes by our soueraigne Lord the king & his progenitours, and by the lordes spirituall and temporal and al the commons of y realm. And I haue also shewed thee in the ix. Cha. of this booke vnder what maner the said generall customes and maximes of the lawe may be proued and affirmed if they were

¶ j.

denyed

The xxxii. chapter.

denied, and diuers other things be conteyned in
this present Dialogue, which wil appeare in &
table, that is in the latter ende of the booke, as
to the readers wil appeare. And in the ende of
the said dialogue, I haue at thy desire shewed
thee my conceipt cōcerning recoueries of tyled
lands & thou hast vpon the said recoueries shew
ed me thine opinion. And I beseeche our lord set
them shortly in a good cleare way, for surely it
wil be right expedient for the wel ordering of
conscience in many parsons that they be so

And thus the God of peace & loue
be alway with vs.

Amen.

Here endeth the first Dialogue in English, with new additions betwixte a Doctour of Diuinitie, and a Student in the lawes of Englande. And hereafter foloweth the seconde.

In the beginning of which Dialogue the Doctour aunswereth to certaine questions, which the Student made to the Doctour before y^e making of this Dialogue concerning the lawes of England and conscience, as appeareth in a Dialogue made betwene them in Latine the xxiiij. Chapter. And he aunswereth also to dyuers other questions that the Student maketh to him in this Dialogue of the law of Englande and conscience. And in diuers other Chapters of this present Dialogue is touched shortly howe the lawes of England are to be obserued & kept in this realme, as to temporall thinges aswell in lawe as in conscience beefore anye other lawes. And in some of the Chapters therof is also touched that spiritual Iudges in dyuers cases be bound to geue their iudgements accordinge to the kings lawe. And in the latter ende of the booke the doctour moueth diuers cases concerning the lawes of England, wherein he doubteth how they may stand with conscience,

wherunto the Student maketh an=

swere in such maner as to y^e

reader wil ap=

peare.

The Introduction.

In the latter end of our first Dialogue in latine, I put diuers cases grounded vpon \S lawes of England wherin I doubted & yet do what is to be holden therin in conscience. But for as muche as the time was then farre past, I shewed thee that I would not desire thee to make aunswere to the forthwith at that time but at some better leiser: wherunto thou saiest thou wouldest not onely shew thine opinion in the cases, but also in suche other cases as I would put. Wherefore I pray thee now (for asmuch as me thinketh thou hast good leiser) \S thou wilt shew me thine opinion therin. D. I wil wth good wil accomplishe thy desire: but I would \S when I am in doubt what \S law of this realme is in suche cases as thou shalt put, \S thou wilt shew me what the law is therin, for though I haue by occasiō of our first dialogue in latin learned many things of \S lawes of this realme which I knew not before, yet neuerthelesse ther be many mo thigs \S I am yet ignorant in, & \S peraduenture in these self cases that thou hast put, and entēdest hereafter to put and as I said in the first Dialogue in latin the xx. Cha. to search conscience vpon any case of the law it is in vaine, but where the lawe in the same case is perfectly knownen. S. I wil wth the good wil do as thou saiest. & I entend to put diuers of the same questions \S be in the last chap. of the said dialogue in latin, & sometime I entēd to alter some of them, and adde some newe questions to them, as I shalbe moste in doubt of.

D.

D. I pray thee do as thou saiest & I shal with good wil either make aunswere to the forthe with as wel as I can, or shal take longer respite to be aduised, or els parauenture agree to thine opinion therin, as I shal see cause. But first I would gladly know y^e cause why thou hast begun this Dialogue in the English tongue, & not in the latine tongue, as y^e first cases y^e thou desiredst to know mine opinion be in, or in frenche as the substance of the law is. **S.** The cause is this. It is right necessarie to al men in this Realme, bothe spirituall and tempozall for the good ordering of their conscience to know many things of the law of Englande that they bee ignorant in. And though it had ben more pleasant to the y^e be learned in y^e latine tongue to haue had it in latine rather the in English: yet neuer thelesse for asmuch as many can read Englishe that vnderstand no latin, and some that cannot read English: by hearing it read may learne diuers things by it that they should not haue learned if it were in latine. Therfore for the profite of the multitude it is put into the English togu rather then into the latin or french tongue. For if it had ben in french, fewe should haue vnderstand it, but they that be learned in the lawe, & they haue least neede of it, for asmuche as they know the law in the same cases about it, & can better declare what conscience wil thereuppon than they that know not the lawe nothing at al. To them therefore that bee not learned in the law of the realme this treatise is specially made for thou knowest wel by such studies thou hast

The i. chapter.

taken to some knowledge of the law of y^e realm
that is to them most expedient. D. It is trew
that thou saiest and therefore I pray thee now
proceede to thy questions.

The first question of the Student.

The first chapter.

I f tenant in taile after possibilitie of issu extinct
do wast whether doth he thereby offend in cō-
science though he be not punishable of wast by
the law? D. As y^e law clere y^e he is not punish-
able for the wast? S. Ye verely. D. And what
is the law of tenauntes for terme of life, or for
terme of yeres if they doe wast? S. They bee
punishable of wast by the statuts & shal yeld re-
ble dānages, but at y^e cōmon law befoze y^e sta-
tut they were not punishable D. But whether
thinkest thou that befoze the statut they myght
haue done wast wth cōscience because they were
not punishable by the law? S. I think not for
as I take it: y^e doing of the wast of such pticu-
ler tenants for terme of life, for terme of yeaeres
or of tenants in dowter, or by the curtesie: is p-
hibited by y^e law of reaso, for it semeth of reaso
y^e when such leases be made, or that such titles
in dowter or by the curtesie be geuen by y^e lawe
that there is onely geuen vnto them the annual
profites of the lande and not the howses and
trees and the grauel to digge and cary aswape,
wherby y^e whole profite of them in y^e reuerfion,
should

should be taken away for ever. And therefore at
 & common law for waste done by tenant in dower
 or tenant by & curtesie, ther was punishment
 ordained by the lawe by a prohibition of waste
 wherby they should haue yeldd damages to &
 value of the waste. But against tenant for terme
 of life or for terme of yeres lay no such prohibiciō
 for ther was no maxime in & law therin against
 the as there was against & other. And I think
 & cause was for asmuch as it was iudged a fol
 ly in the lessour & made such a lease for terme of
 life or for terme of yeres, & at that time of & lesse
 he did not prohibite the that they should not do
 waste, and sith he did not prouide no remedy for
 himselfe, the law would none prouide.

But yet I thinke not that the entent of & lawe
 was & they might lawfully & with good cōscy-
 ence do waste, but against tenauntes in dower &
 by the curtesie & law prouided remedy for they
 had their title by the law.

And verely me thinketh that this tenant in taile
 as to doing of waste, should be like to a tenaunt
 for terme of life, for he shal haue the land no len-
 ger then for terme of his life, no more than a te-
 naunte for terme of life shal, and the waste of
 this tenaunt is as great hurte to him in the re-
 uercion or the remainder, as is the waste of a te-
 naunte for terme of life, and if hee alien, the
 donour shal enter for the forfeiture as he shall
 vpon the alienacion of a tenant for terme of life
 and if hee make default in a precipe quod red-
dat the donour shalbe receiued as hee shal bee
 vpon the default of a tenaunt for terme of lyfe

H. iiij.

and

lin. p. 7.

The second booke.

¶ therefore me thinketh he shal also be punisha-
ble of wast, as tenant for terme of life shal. **S.**
¶ If he alien, the donour shal enter as thou sayst
because the alienacion is to his disheritaunce, &
therefore it is a forfeiture of his estate: & that is
by an auncient Maxime of the lawe that ge-
ueth that forfeiture in that self case, & if he make
default in a *De qđ reddat*, hee in the reuerſion,
as thou saiest shalbe receiued, but that is by the
statut of westm. ii. for at the common lawe there
was no such rescite, & as for the statute y^e ge-
ueth the accion of wast against a tenat for terme
of life & for terme of yerres it is a statute penall
& shal not be taken by equitie, & so ther is no re-
medy geuen against him, neither by comon law
nor by statut, as ther is against tenant for term
of life, and therefore he is unpunishable of wast
by the law. **D.** And thoughe he be unpunish-
able of wast by the law: yet neuerthelesse mee
thinketh he may not by conscience do that, that
shalbee hurtefull to the enheritaunce after hys
time, sith hee hath the land but for terme of hys
lyfe, no more then a tenaunte for terme of lyfe
maye. for then hee shoulde doe as hee woulde
not bee done vnto, for thou agreest thy self that
though a tenaunt for terme of life was not pu-
nishable of wast befoze the statute, that yet the
lawe iudged not that he might rightfullpe and
with good conscience doe waste. And therefore
at this daie if a feffement be made to the vse of
a man for terme of life, though there lye no accio
against hym for waste, yet he offendeth in con-
science if hee do waste, as the tenaunt for terme
of

of life did afoze the statut, when no remedy lay
 against him by the lawes. **S.** That is trespas
 but there is greates diuersitie betwene thys ten-
 nant and a tenant for terme of lyfe: for this ten-
 nant hath good aucthoritie by the donour to do
 wast, and so hath not the tenant for terme of
 life, as it is said before. For the estate of a ten-
 nant in taile after possibilitie of issue extincte is
 in this maner, when lands be geuen to a man &
 to his wyfe, and to the heires of their two bodi-
 es begotten, & after the one of them dyeth without
 heires of their bodiess begotten, then hee or shee
 y^e ouerliueth is called tenant in taile after possi-
 bilitie of issue extinct, because there can neuer be
 no possibilitie by any heire that may enherite by
 force of y^e gift. And thus it appeareth y^e the do-
 nees at y^e time of the gifte, receiued of y^e donour
 estate of enheritance, which by possibilitie might
 haue continued for euer, whereby they had po-
 wer to cut downe Trees and to doe al thynge
 that is wast. as tenant in fee simple mighte, and
 that aucthoritie was as strong in the law as if
 y^e lessour; that maketh a lease for terme of lyfe
 lay by expresse wordes in the lease y^e the lessee
 shal not be punishable of wast. And therfore if
 the donour in this case had graunted to y^e donees
 that they should not be punishable of wast, that
 graunt had ben void because it was excluded in
 the gift before, as it should be vpon a gifte in fee
 simple: & so for asmuch as by y^e first gift & by y^e
 liuerie of seison made vpon the same the donees
 had aucthoritie by the donour to do wast. Ther-
 fore though the one of that donees be now dead
 with

11. H. 4. 12. a.
 45. E. 3. 25. a.

nota

The i.chapter.

without issue, so that it is certaine that after & death of the other, the lande shall reuerte to the donour: yet the aucthoritie that they had by the donour to do wast, cōtinueth as long as the gift & the liuerie of season made vpon & same continueth: & I take this to be the reason why he shall not haue in aide as tenant for terme of life shal, & is to say, for that he cannot aske helpe of that maxime, wherby it is ordeined that a tenāt for terme of life shal haue in aid, for hee cannot saye but that he tooke a greater estate by the liuerie of seison & was made to him, whiche yet contynueth then for terme of life, & so I think him not bound to make any restitution to him in & reuercion in this case for & wast D. Is thy mind only to proue & this tenant is not bounde to make restitution to him in the reuercion for the wast? or that thou thinkest that he may with clere cōsciēce do al maner of wast? S. I intēd to proue no more but that he is not bound to restitution to him in the reuercion D. Thā I wil right wel agree to thine opinion for the reason that thou hast made, but if thy mind had bene to haue proued & he might with cleare cōsciēce haue done al maner of wast, I would haue thought the cōtrary therto, and that the tenaunt in fee simple may not do al maner of waste and destruction with conscience, as to pul downe howses and make pastures of Cities and townes, or to doe such other actes whiche bee againste the common wealthe. And therefore some wyll saye that tenaunte in fee simple, maye not wpythe conscience destroye his woodes and coale pyttes

2. H. 4. 19. a. 7. H. 4.
50. 11. a. 11. H. 4. 12. a.
et 69. a.

tes wherby a whole countrey for theire money haue had fuel. And yet though he do so he is not bound by cōscience to make restitution to no p̄sō in certein. But now I pray thee ere thou proceede the second case, & thou wilt sōewhat shew me what thou meanest when thou saiest: at ȳ cōmon law it was thus oz thus? I vnderstā not fully what thou meanest by that terme at the cōmon law. S. I shal with good wil shewe the what I meane therby.

¶ What is ment by this terme when it is saide thus, it was at the common law.

The ij. Chapter.

The common lawe is taken three manner of waies. First it is taken as the lawe of this realme of Englande disceiuered from all other lawes, and vnder this maner taken. It is oftē times argued in the lawes of Englande what matters ought of right to be determined by the cōmon law, & what by ȳ Admirals court, oz by ȳ spiritual court, & also if ā obligaciō beare date out of ȳ realme as in Spaine, Fraunce, oz such other. It is said in ȳ law and trouth it is, that they be not pleadable at ȳ cōmon law. Secōdly the common law is taken as the kings courtes of his benche oz of the common place, and it is so taken when a ple is remoued out of auncient demeane for that the land is frank fee and pleadable at the common law, that is to saye in the kings courte & not in auncient demeane.

And

The second booke.

And vnder this maner taken, it is oftentimes pleaded also in base courtes, as in courtes Barons, the county and the court of Wyppouers, & such other this matter oz ꝑ ꝑc. oughte not to be determined in that court but at the common law ꝑ is to say in the kings courtes &c. Thirdly by the comon law is vnderstande suche thinges as were lawe befoze anye statute made in that point that is in questiō: so ꝑ that point was holden for law by the general oz particuler customes and Maximes of the Realmes oz by the lawe of reason and the lawe of god: no other law added to them by Statut noz otherwise as in the case befoze rehearsed in the firste Chapter where it is said that at the common law tenant by the curtesie and tennant in doſſer were punishable of waſt, that is to say, that befoze anye statute of waſte made they were punishable of waſte by the ground and Maximes of ꝑ lawes vſed befoze the statut made in that pointe, but tennant for terme of life ne for terme of yeares were not punishable by the ſaid groundes and maximes til by the statute, remedy was geuen againſt them: and therfore it is ſaid that at the common law they were not punishable of waſt D. I pray thee now proceede vnto the ſecond question.

The ſecond question of the
Student.

The iii. chapter.

If a mā be outlawed & neuer had knowledg
of the suite, whether may the king take al his
good, and retaine them in conscience as he may
by the law. D. what is the reason why they be
forfayted by the law in that case? S. The very
reason for that it is an olde custome and an olde
Maxime in the lawe, that hee that is outlawed
shal forfeit his goods to the king, and the cause
why that Maxime began was this. whā a mā
had done a trespass to other or an other offence
wherfoze proccesse of outlagary lay, & he that
offence was done to had taken an action a-
gainst him according to the lawe, if hee had ab-
sented himselfe and had no landes, there had
beene no remedye against him: for after the
lawe of Englande no man shalbee condemned
without answer, or that he appeare and wil
not answer, except it bee by reason of anye
statute. Therefore for the punishmente of
such offendours as wil not appeare to make
answer and to be iustified in the kings court
it hath beene vsed without time of minde, that
an attachement in that case shoulde bee direc-
ted against him retournable in the kinges bēch
or the common place, and if it were returned
thereupon that he had noughte where by hee
mighte be attached, that then shoulde go forthe
a Capias to take hys parson, and after an
alias Capias, and then a Pluries, & if it were
returned vpon euerye of the said Capias that
he coulde not be founde and hee appeared not
then shoulde an exigent be directed against him.
which shoulde haue so long a daye of retourne,
that

The iii. chapter.

that five countres might be holden befoze & re-
turne therof and in euery of the said five coun-
ties the defendand to be solempnely called, & if
he appeared not, then for his cōtumacy & disobe-
dience of the lawe, the coroners to geue iudge-
ment that he shalbe outlawed, wherby hee shall
forfeit his goods to the king and leese diuers o-
ther aduantages in the lawe & needeth not here
to be remembred now. And so because he was
in this case called according to the lawe & appea-
red not, it semeth that the king hath good title
to the goodes both in law and conscience,

D. If he had knowledge of the suit in verpe
deede it semeth the king hath good title in cōsci-
ence as thou saist. But if he had no knowledge
therof: it semeth not so, for the default that is ad-
iudged in him (as appeareth by thine owne rea-
son) is his cōtumacy & disobedience of the lawe:
and if hee were ignoraunt of the suite, then can
there be assigned to him no disobedience for a dis-
obedience implieth a knowledge of & he should
haue obeyed vnto.

S.
It semeth in this case that he should be cōpel-
led to take knowledge of the suite at his paryl,
for sith he hath attempted to offend the lawe: it
seemeth reason that he shal be compelled to take
hede what the lawe wil do against him for it, &
not only that: but that he should rather offer a-
menides for his trespass then for to tary till hee
were sued for it. And so it semeth the ignorance
of the suite is of his owne default, specialllye sith
in the lawe is set suche order that euerye man
may know if he will what suit is taken against
hym

him, & may see the records therof when he wil
 & so it semeth & neither the party nor the law be
 not bounden to geue him no knowledge therein.
 And ouer this I would somewhat moue further
 in this matter thus. That though & accio were
 vnttrue & & defendat not guilty, & yet the goodes
 be forfaited to the king for his not apparance in
 law & also in conscience, and that for this cause
 the king as soueraigne, and head of the lawe is
 bounden of iustice to graunt such writtes & such
 processe as be appointed in the law to euery
 person that wil complain, be his surmise true or
 false, and thereupon the king (of iustice) owethe
 as wel to make processe to bring the defendant
 to aunswere when he is not guilty as when hee
 is guilty, and then when ther is a maxime in the
 law, that if a man be outlawed in such manner
 as befoze appeareth that he shal forfait all hys
 goodes to the kinge, and maketh no exception
 whether the accion be true or vnttrue, it seemeth
 that the said maxime moze regardeth the gene-
 ral ministracion of Iustice then the particuler
 right of the party, and therefore the property by
 the outlawry & by the said maxime ordeined for
 ministracio of iustice is altered & is geuen to the
 king as befoze appereth & & both in law & in co
 science as wel as if the accio were true. And the
 the party that is so outlawed is drine to sue for
 his remedy against him that hath so caused him
 to be outlawed vpon an vnttrue accion. D.

If he haue not sufficient to make recompence
 or dye befoze recouerie can bee had, what re-
 medye is had then. S. I thinke no remedye
 and

The second booke.

& for a further declaracion in this case & in such other like cases where the property of goodes may be altered without assent of the owner yet is to consider that the property of goodes bee not geuen to the owners directlye by the lawe of reason nor by the lawe of God, but by þe lawe of man, and is suffered by the lawe of reason and by the lawe of god so to be. For at the beginning al goodes were in common, but after they were brought by the lawe of man into a certein property so that every man might know his owne, & than whan such property is geuen by the lawe of man, þe same lawe may assigne suche condicions vpon the property as it listeth, so they bee not against the lawe of God ne the lawe of reason, and may lawfully take away that it geueth and appoint how long the property shal continue. And one condicion that goeth with every propertie in this realme is if hee þe hath the property be outlawed according to such processe as is ordeined by the lawe, that hee shal forfeit the property vnto the king, and diuers other cases there be also, whereby property in goodes shall be altered in the lawe and the righte in landes also without assent of the owner, wherof I shal shortly touche some without saying any auctoritie therein, for the moze shortnes. First by a sale in open market þe property is altered. Also goods stolen and seised for the kinge or weyued be forfait onles appel or inditement be sued. Also straites if they be proclaimed & be not after claimed by the owner & in the pere, be forfait & also a deodand is forfait to who so euer the property

pars

The.iiij. Chapter. fol.66

partie was befoze (except it belōged to ꝑ king)
& shalbe disposed for the soule of him that was
slaine therewith, and a fyne with a nonclaime at
the common law was a barre ꝑ clayme were
not made within a yere as it is now by statute
if the claime be not made within. v. yeres. And all
these forfeitures were ordeined by the law vpon
certaine considerations whiche I omit at
this time, but certaine it is ꝑ none of them was
made vpon a better consideration than this for-
feiture of vilagary was. For ꝑ no especyall
punishment should haue been ordeyned for offe-
ders ꝑ would absent them selfe and not appere
whē they were sued in the kings courts, many
sutes in the kings courtes should haue bene of
small effect. And such this Maxime was ordai-
ned for the execucion of Justice & as much doe
therein by the common law as pollicie of man
could reasonably deuise to make the partie haue
knowledge of the suite, and now is added
thereto by the statute made the sixt yere of king
Henry the eyght that a writte of proclamacyon
shalbe sued if the party be dwellinge in another
shire, it semeth that such title as is geuen to the
king therby is good in conscience, especyally see-
yng ꝑ the king is bounden to make proceſſe vpon
the surmise of the plaintife and may not ex-
cuse anye but by the plee of the party whether the
surmise be true or not. But ꝑ the party bee
retourned. v. times called, wher in dede he was
never called (as in the seconde case of the laste
Chapter of the said dialogue in latin is contey-
ned) then it semeth the party shal haue good re-

The iiij. Chapter

medy by petition to the king, specially if he that made the returne be not sufficient to make recompence or dye before recovery can be had. D.

Now sith I haue hard thine opiniō in this case wherby it appeareth that many things must be seene or a ful & a plaine declaratiō cā be made in this behalfe, & seing also that y^e plaine aunswere to this case shall geue a great light to diuers other cases that may come by such forfaiture. I pray thee geue me a farther respite or y^e I shew thee my ful opinion therin, and hereafter I shal right gladly do it. And therfore I pray thee proceede now to some other case.

The third question of the student.

The.iiij. Chapter..

I f a straūger do wast in landes that another holdeth for term of life without assent of the tenaunt for terme of life: whether may he in the reuercion recover treble damages and the place wasted against the tenaunt for terme of lyfe according to the statut in conscience as he may by the law, if the straūger be not sufficient to make recompence for the wast done. D. As the law clere in this case y^e he in the reuercion shal recover against the tenaunt for terme of life though he that he assented not to the doing of waste? S. Ye verely, and yet if the tenant for terme of lyfe had ben boundē in an obligaciō in a certain sōme of money y^e he should do no wast: he should not forfeit his bond by the wast of a straunger, and the

The.iiij. Chapter. fol. 67

the diuersitie in this. It hath beene vsed as an
 auncient maxime in þ law þ tenā by the curtesy
 and tenant in dower should take the land with
 this charge, þ is to say, that they shoulde do noe
 wast themselves nor suffer none to be done, & whē
 an accion of wast was geuen after against a te-
 nant for terme of life, then was he taken to bee
 in the same case as to þ poynt of wast as tenant
 by the curtesye and ternaunt in dower was, that
 is to say, þ he should do no wast nor suffer none
 to be done, for ther is another maxime in þ law
 of England that all cases lyke vnto other cases
 shalbe iudged after the same law as the other ca-
 ses be, and sith no reason of diuersitie can bee as-
 signed why the tenant for terme of life after an
 accion of wast was geuen against him, should
 haue any moze fauour in the law then the tenā
 by þ curtesy or tenant in dower should, therfore
 he is put vnder the same maxime as they bee, þ
 is to say, that he shal do no wast ne suffer none
 to be done, & so it semeth that þ law in this case
 doth not consider the abilitie of the parson that
 doth the wast whether he be able to make recō-
 pence for the wast or not. But the assent of the
 said tenants wherby they haue wilfullie taken
 vpon them the charge, to see that no wast shalbe
 done. D. I haue harde that if houses of these
 tenants be destroyed w sodeine tempest or with
 strange enemies þ they shall not bee charged w
 wast. S. Trowthe it is D. And I thynke
 þ reaso is because they cā haue no recouery ouer
 S. I take not þ for the reaso, but þ it is an old
 reasonable Maxime in the law þ they shoulde,
 I.ij. bee

The iiij. Chapter

be discharged in those cases, how be it some will say & in those cases the lawe of reason doth discharge the & therfore they say & if a statut were made & they should be charged in those cases of wast & the statut were against reason & not to be obserued, but yet neuertheles I take it not so for they might refuse to take suche estate if they would, & if they wil take the state after the law made it seemeth reasonable that they take it wth the charge and with the cōdicion that is appointed thereto by the lawe though hurte myght follow to them afterwarde thereby, for it is often times seen in the law & the law doth suffer him to haue hurt wthout help of the law that wil wilfully runne into it of his owne acte not compelled therto, and adiudgeth it his folly so to run in to it, for which folly he shall also be many times without remedy in conscience. As if a man take landes for terme of life, and bindeth himselfe by obligation that he shal leaue the land in as good case as he found it, if the houses be after blowne downe with tempest or destroyed with strange enemies as in the case & thou hast put before he shalbe bound to repaire them or els he shal forfait his obligation in lawe & conscience, because it is his own act to bind him to it, & yet the law would not haue bound him therto as thou hast said before. Some thinketh that the cause why the said tenants be discharged in the lawe in an action of wast when the houses be destroyed by sodeine tempest or by strange enemies, is by a special reasonable maxime in the law, wherby they be excepted frō & other general bōd before reher sed,

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sed that is to say, they shal at their peril see that no wast shalbe done, & not by the law of reason and sith there is no maxime in this case to helpe this tenant ne y he cannot be holpen by the law of reason, it semeth y he shalbe charged in thys case by his owne act both in lawe & conscience. Whether the straunger be able to recōpenae him or not. **D.** I doubt in this case whether y maxime that thou speakest of be reasonable or not y is to say, that tenauntes by the curtesye and tenants in dower were bounden by the common law y they should do no wast thēself, & ouer y at their peril to see y no wast shoulde be done by none other. For that lawe seemeth not reasonable that bindeth a man to an impossibilitie. And it is impossible to p̄uēt that no wast shalbe dōe by straungers, for it may be sodeinly done in the night y the tenants can haue no notice of, or by great power y they be not able to resist, & therefore me thiketh they ought not to be charged in those cases for the wast, without they may haue good remedy ouer, & then percase y said maxime were sufferable, & els mee thinketh it is a maxime against reaso. **S.** As I haue said befoze no man shalbe compelled to take y bond vpon hym but he that wil take the land, and if he will take the land: it is reaso he take y charge as the law hath appointed with it, & then if any hurt grow to him therby: it is through his owne act & hys owne assent, for he might haue refused the lease if he would.

D. Though a man may refuse to take estate for terme of life or for term of yeres & a womā may

I.ij.

refuse

The.iiij. Chapter.

refuse to take her dower, yet tenāt by ſ curtesy
 can not refuse to take his estate, for immediatly
 after ſ death of his wife, ſ possession, abideth stil
 in him by the act of the law without enter, and
 then I put the case that after the deathe of hys
 wife, hee woulde waive the possession and after
 wast were done by a strāger, whether thinkest
 thou that he should aunswere to the wast. **S.**
 I thinke he shoulde by the lawe. **D.** And how
 standeth that with reason. seying there is no de-
 fault in him. **S.** It was his default, and at
 his own peril that he would mary an inheritrix
 wherupon such daunger might folowe. **D.**
 I put case that he were within age at the ma-
 riage or that the lād descended to his wife after
 hee married her. **S.** There thou mouest a far-
 ther doubt then the firste question is, & though he
 it were as thou saiest, yet thou canst not say but
 that ther is as great default in him, as is in him
 in the reuerſion, & that there is as great reason
 why he should be charged with the wast as that
 he in the reuerſiō should be disherited and haue
 no maner remedy ne yet no profit of the land as
 the other hath, and though ſ saide maxime may
 be thought very straight to the said tenants: yet
 is it for to be fauoured as much as may be rea-
 sonably because it helpeth much ſ common welth
 for it hurteth the common welth greatly when
 woods & houſes ben destroyed, & if they shoulde
 aunſwer for no wast, but for wast dōe by theſelf
 ther might be wast done by strangers by cōmaū-
 demēt or assent in such colourable maner that
 they in the reuerſion should neuer haue profe of
 their

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their assent. D. I am content thine opiniō stand
for this time, and I pray thee now proceede to
another question.

The fowerth question of the Student

The.v.Chapter.

I f he that is the very heire be certified by the
ordinary bastard, and after bring an acciō as
heire against another parson, whether may any
mā knowing y^e trouthe be of counsell & the tenāt
& pleade the said certificat againste y^e demāndāt
by cōscience or not D. As the law in this case
y^e al other against whō the demādant hath title
shal take aduāitage of this certificat as wel as
he at whose suite he is certified bastard? S.
ye verely, & y^e for twoe causes, whereof y^e on^r is
this. There is an olde maxime in the law that a
mischief shalbe rather suffred than an inconue-
nience, & thē in this case if another writ should
afterward be sēt to another Bishop in another
accion to certify whether he were bastard or not
paradventure that Bishop would certifie that
he were mulier, that is to say lawfully begottē,
and then he should recouer as heire, and so hee
should in one selfe court bee taken as mulier, &
bastarde, for auoyding of whiche contrariētie,
the law wil suffer no moe writtes to go foorthe
in that case, and suffreth also al men to take ad-
uāitage of y^e certificat rather thē to suffer suche
a cōtradictiō in y^e court which in y^e law is called
an incōueniēce, & the other cause is because this

J. iij.

certifi-

The.v.Chapter.

certificat of the Bishop, is the hiest trial that is in the law in this behalf. But this is not vnderstand but where bastardy is layde in one that is party to the writ for if bastardy bee laide in one that is a stranger to the writ as if bouche pray in ayde or such other, then that bastardy shalbee tried by, xij. men by which trial he in whom the bastardy is layd shal not be concluded because he is not prime to the tryall and maye haue no attaint, but he y is party to the issue may haue attaint, and therefore he shalbe concluded & none other but he, & for asmuche as the said Maxime was ordeyned to eschewe an inconuenience (as before appeareth) it semeth y euery man learned may with conscience pleade the sayde certificate for auoiding therof, and geue counsaile therin to the party accordyng vnto the law, for els y sayd inconueniencie must nedes folow. But yet neuertheles I do not meane thereby y the partye may after when he hath barred the demandant by the said certificat retaine the land in conscience by reason of the said certificat, for though there be no law to compel him to restore it, yet I think well that in conscience hee is bound to restore it, if he knowe y y demandat is y very true heire: wherof I haue put diuers cases like in y xvij. chap. of our first dialogue in Latin, but my intēt is y a mā lerned in y law in this case & other like may w conscience geue his counsaile accordyng to y law in auoidig of such thigs as y law think it shold for a resonable cause be eschewed. D. Though hee that doth not knowe whether he be bastard or not may geue his counsaile and also

The.v. Chapter fo.70

also pleade the said certificat: yet I think & hee that doth know him self to be the very true heir may not pleade it, and & is for two causes where of the one is this.

Every man is bound by the law of reason to do as he would be done to, but I think & if hee that pleadeth that certificat were in like case, he would think & no man knowing the said certificat to be vnttrue might & conscience plead it against him, wherfore no more may hee pleade it against none other.

The other cause is this, although the certificat be pleded, yet is & tenant bounden in conscience to make restitution therof as & hath sayde thy selfe, and then in case & he would not make restitution, then he & pleadeth the plee, shoulde run therby in like offēce, for he hath holpen to set the other man in such a libertie & he maye chosse whether he wil restore the land or not, & so hee shoulde put him selfe to the ieopardy of another mans cōscience. And it is wryten Ecclesiast. iij. Qui amat periculū peribit in illo. That is, he & wilfully wil put him self in ieopardy to offend, shal perish therein, and therefore it is the surest way to eschew perils from him & knoweth & he is heire, not to pleade it & as for & incōueniēce & & saist must nedes folow but & certificat be pleded: as to & it mai be answered & it may be pleded by sōe other & knoweth not & he is very heire, & if & case be so far put & ther is none other lerned ther but he, thē me thiketh & he shal rather suffer & said incōueniēce thē to hurt his own cōscience, for alway charite begineth at himself & so euerie

The.vj. Chapter.

every mā ought to suffer al other offēces rather then he himselſe would offende. And nowc that thou knowest mine opinion in this case, I pray thee proceede to another question.

CThe fifth question of the student.

The.vi. Chapter.

Whether maye a man wyth conscience bee of counsaile with the playntife in an accion at the common law knowing ꝑ the defendāt hath sufficient matter in cōscience wherby he may be discharged by a Sub pena in the Chaucerpe which he cannot pleade at ꝑ cōmon law or not? **D.** I pray thee put a case therof in certayn, for els the question is very general.

S. I will put the same case that thou puttest in our first dialogue in Latin the.x.chapter that is to say if a man bound in an obligation pay the money and taketh none acquittance so ꝑ by the common law hee shal bee compelled to paye the money againe for such consideratiō as appereth in the.xv.chapter of the said dialogne, wher it is shewed evidently how the law in ꝑ case is made vpon a good reasonable ground much necessary for al the people, how be it ꝑ a man maye sometime through his own default take hurt therby wherin I pray thee shew me thine opinion.

D. This case semeth to bee like to the case that thou hast put next befoze this, and ꝑ hee that knoweth the payment to be made doth not as he would be done to if he geue counsell ꝑ an accy=
on

on should be taken to haue it paide againe.

S. If he be sworn to geue counsel according to the law, as sergeants at the law be, it seemeth he is bound to geue counsaile accordynge to the law, for els he shoulde not perfourme his othe, **D.** In those words (according to the lawe) is vnderstand the law of God, & the law of reason as well as the law and customes of the realme, for as y^e haue saide thy self in oure first dialogue in Latin, *Althe lawe of god and the law of reason be two especial grounds of the lawes of England*, wherfore as mee thinketh hee may geue no counsel (sauing his othe) neither against the law of god nor y^e law of reason, and certain it is that this article, y^e is to saye, y^e a man shall do as hee would be done to, is grounded vpon both y^e said lawes. And first y^e it is grounded vpon the law of reason, it is euident of it self. And in the. vi. chapter of **S. Luke** it is said. *Et prout vultis vt faciant vobis homines, & vos facite illis similiter* that is to saye al y^e other mē should do to you: do you to them, and so it is grounded vpon the lawe of god, wherfore if he should giue counsel against the defendan in y^e case: hee shoulde do agaynst bothe the saide lawes. **S.** If the defendan had none other remedye but the common lawe, I would agree well it were as thou saist, but in this case he may haue good remedye by a subpena and this is the way y^e shall induce him directlpe to his subpena, y^e is to saye, when it appeareth y^e the plaintife shall recouer by the lawe. **D.** Though y^e defendan may be discharged by subpena yet the bringing in of his proues there wil be to the

The.vij. Chapter.

the charge of the defendāt, & also ꝑ proues may dye oꝝ they come in. Also there is a groſſid in the law of reason, quod nihil posſimꝰ contra veritatem (ꝑ is) we may do nothig against ꝑ trouth, & ſith he knoweth it is trouth ꝑ ꝑ money is payd he may do nothing againſte the trouth, & if hee ſhould be of counſail wꝫ the plaintiff, he muſt ſuppoſe & auerre ꝑ it is the very due debt of ꝑ plaiſtife, & ꝑ the defendant wꝫholdeth it from him vnlawfully which he knoweth him ſelf to bee vntrue, wherfoze he may not wꝫ conſcience in thys caſe be of counſaile wꝫ the plaintife, knowinge ꝑ the plaintiff is paid al ready, wherfoze if thou be cōtēted wꝫ this aunſwer I pray thee procede to ſome other queſtion S. I wil with good will.

The.vij. queſtion of the ſtudent.

The.vij. Chapter.

A Man maketh a feoffement to the uſe of hym & of his heirs, & after the feoffour putteth in his beſtes to manure the ground, & the feoffee taketh them as damages ſelant & putteth them in pound, and the feoffour bryngeth an accyon of trespas againſt him foꝝ ētring into his ground &c. whether may any man knowing the ſaid uſe be of counſaile with the feoffe to auoid ꝑ accion D. May he by the cōmon law auoydꝰ that accion ſeing that the feoffour ought in conſcience to haue the profites. S. Yee verely, foꝝ as to the com=

common law the whole interest is in the feoffe, & if y^e feoffe wil breake his consciēce and take y^e profits: y^e feoffour hath no remedy by the common lawe, but is driuen in y^e case to sue for hys remedy by subpena for the profits, and to cause him to refoffe him againe, and y^e was somtime y^e most common case wher y^e subpena was sued y^e is to save before the statute of Rycharde the thirde but lich y^e statute y^e feoffour may lawfully make a feoffement. But neuerthelesse for the profits received, the feoffour hath yet noe remedy but by Subpena as he had before the sayde statute. And so the supposell of thys accion of trespassse is vnttrue in euery point as to y^e comon lawe.

D. Though the acciō be vnttrue as to the law yet he y^e sueth it ought in conscience to haue y^e he demaūdeth by the accion, y^e is to say, damages for the profits, & as it semeth no man may with conscience geue counsaile against y^e he knoweth conscience would haue done. S. Though cōscience would he should haue y^e profits, yet cōscience wil not y^e for y^e attaining therof y^e feoffoure shold make an vnttrue surmise. Therfore against the vnttrue surmise euery man may wth cōscience geue his counsaile, for in that doing he resisteth not the plaintife to haue the profits, but he wth stādeth him y^e he should not maintain an vnttrue accion for the profits. And it suffiseth not in the law ne yet in cōsciēce as me seemeth that a man haue right to y^e he sueth for, but y^e also he sue by a iust meanes, & y^e he haue both good right & also a good & a true cōueiāce to come to his right
for

The.vij. Chapter

for if a man haue right to landes as heire to hys father and he wil bring an accion as heire to hys mother & neuer had right. every man may geue counsaile against y^e accion though hee knowe hee haue right by another meanes, & so as me thinketh he may do in dilatozies, wherby the party may take hurt if it were not pleaded, though he knowe the plaintife haue right, as if the party or y^e tosome be misnamed or if the degrees in writs of entre be mistaken, but if the party shold take no hurt by admitting of a dilatozy ther he y^e knoweth y^e the plaintiff hath the right may not pleade that dilatozy with conscience as in a formedone to pleade in abatement of y^e writ because he hath not made him self heire to him y^e was last seised or in a writ of right for that the demaundaunt hath omptred one y^e tended right ne suche other ne he may not assent to the casting of an essoigne nor proteccion for him if he knowe that the demaundaunt hath right, ne he may not vouch for him except it be that he knoweth y^e the tenaunt hath a true use of a vouchur, and of lien, & that he doth it to bring him therto, & in likewise hee may not pray in ayde for him vnllesse he knowe y^e pray haue good cause of vouchur and lien ouer, or that he know that y^e pray hath somewhat to pleade that y^e tenant may not pleade as villeyne in the demaundaunt or such other. D.

Though the plaintife hath brought an accion y^e is vntreue and not maintainable in the law, yet y^e defendant doth wrong to the plaintiff in the withholding of the profits as wel before the accion brought as hanging the accion, and that wrong as

as it semeth the counsaillour doth maintain and also sheweth himself to fauour þe partye in that wrong when he geueth counsaile against the accion.

S. If the plaintife do take that for a fauour & a maintenance of his wrong, hee iudgeth farther then the cause is geuen, so that þe counsaillour do no more but geue counsaile against þe accion, for though he geue him counsaile to stande the accion for the vnt ruth of it, and that he shoulde not cofesse it & to make therby a fine to þe kyng without cause yet it may stand & reason that he may geue counsaile to the party to yeld þe profits, & therfore I think he may in this case be of counsaile & him at the common law & be against him in the chauncery & in either court geue his counsaile without any contrariety or hurte of conscience, and vpon this ground it is þe a mā may with good conscience be of counsaile & him that hath land by discent or by a discontinuāce without title, if he that hath the right bring not hys accion according to the law for the recoveringe of his right in that behalfe.

The seventh question of the student.

The. viij. Chapter.

I f a man take distress for debt vpon an obligaciō or vpon a contract or such other thing þe hath right title to haue, but þe ought not by þe law to distrain for it, and neuertheless he kepeth the
the

The.viii. Chapter

The same distresse in pound til he be paid of his duety, what restitution is he bounde to make in this case whether shal he repaye the money because he is cōe to it by an vnlawful meanes or only to restore the party for y^e wrongful taking of y^e distres or for neither, I pray you shew me D. What is the lawe in this case S. That he y^e is distrained may bring a special accion of trespass against him y^e distrayned, for y^e hee toke his beastes wrongfully & kept them til he made a fine & therefore he shal recover y^e fine in damages as he shal do for the residue of trespass, for y^e taking of the money by such compulsion is takē in y^e law but as fine wrongfullye takē, though it be his duety to haue it D. yet though hee may so recover, me thinketh y^e as to y^e repaimēt of the money he is not bound thereto in conscience so y^e he take no more then of right he ought to haue, for though he come to it by an vniust mean, yet whē y^e money is paid him, it is his of right & he is not bound to repay it vnlesse it bee recovered as thou saidst, and then when he hath repaide it he is as mee thinketh restored to hys first accion, but to y^e redeliuere of y^e beastes with such dāages & such hurt as he hath by y^e distres I suppose he is bound to make recōpence of thē in conscience without compulsion or sute in the law, for though hee might lawfullye haue sued for his duty in such maner as y^e law hath ordered yet I agree wel y^e he may not take vpon him to be his own iudge & to come to his duty against the order of the lawe, & therefore if anye hurte come to the party by y^e disorder hee is bound to
restore

restoze it. But I would thinke it were y more
doubt if a man tooke suche a distresse for a tres-
pas done to him, and kepeth the distresse til ame-
des be made for y trespass, for in case that y dā-
mages ben not in certein but be arbytrable ey-
ther by the assent of the parties oz by xij men, &
it seemeth that there is no assente of the partye
in this case specialiy no free assent, for that hee
doth: is by compulsion and to haue his distres
again. and so his assent is not much to be pon-
dered in y case, for al his assessing of him y take
the distresse and so hee hathe made himselfe hys
owne iudge and that is prohibited in all lawes,
but in that case where the distresse is taken for
debt, he is not his own iudge, for the debt was
iudged in certeine befoze by the firste contrade
and therefore some thinke great diuersitie bee-
twene the cases. **S.** By that reason it see-
meth that if he that distrayneth in the first case
for the debt take any thinge for his damages y
he is bounde in conscience to restoze it agayne,
for damages be arbitrabile and not certeine no
more than tresfasse is, and me semeth that both
in the case of tresfasse & debt he is bound in cō-
science to restoze that he taketh, for though hee
ought in right to haue like summe as he recey-
ueth yet he ought not to haue y money that hee
receiueth, for he came to y money by an vniuste
meanes, wherfoze it semeth he ought to restoze
it againe. **D.** And if he should bee compelled
to restoze it againe: should he not yet (for y hee
receiued it once) bee barred of his firste accion
notwithstanding the paiment? **S.**

The viii. chapter.

I wil not at this time clearly assoile thee that question, but this I wil say & if any hurt come to him thereby, it is through his owne defaulte, for & he would do against the lawe, but neuertheless a little I wil say to thy question, & as me seemeth when he hath repayed the money & he is restored to his first accion. As if a man condemned in an action of trespass pay & money & after the defendand reuerse the iudgement by a writ of error and haue his money repayd, then the pleintife is restored to his first accion. And therefore if he that in this case tooke the money: restore & he tooke by the wrongfull dystresse: or that hee ordered the matter so liberallye that the other murmure not, ne complayne not at it, me seemeth he did verpe wel to be sure in conscience: and therefore I woulde aduise every man to be wel ware howe hee dystrayneth in suche case against the lawe. D. Thy counsaile is good & I note much in this case that the partye may haue an accion of trespass against hi that distrained so that hee is taken in the lawe but as a wrong doer, and therefore to pay & money againe is the sure way as thou hast said before. And I pray the now shewe me for what thing a man may lawefully distraine as thou thinkest.

¶ For what thing a man may lawfully distraine.

The ix. chapter.

A man

The ix. chapter. fo. 75

A Man may lawfully distraine for a rent
service and for al maner of seruices, as ho-
mage, fealty, escuage, sulte of courtes, repletes
and suche other. Also for a rent reserved
upon a gifte in taylor, a lease for terme of life,
for yerres, or at wil, if he reserve the reuercyon
the feoffor shall distraine of common ryghte
though there bee no distresse spoken of. But
in case a man make a feoffment and that in fee
by indenture reseruinge a rent, he shall not dis-
traine for that rent vntlesse a distresse bee ex-
pressely reserved, and if the feoffment be
made withoute a deede reseruinge a rent, that
reseruacion is boide in the lawe, and hee shall
haue the rent onely in conscience and shall not
distraine for it, and like lawe is where a gifte
in taylor or a lease for terme of life is made the
remaynder ouer in fee reseruinge a rent, that
reseruacion is boide in the lawe. Also if a man
seised of lande for terme of life graunteth away
his whole estate reseruinge a rent, that re-
servacion is boide in the lawe without it be by
indenture, and if it be by indenture: yet he shall
not distraine for the rent but a distresse be reser-
ued. Also for amerciament in a leete the Lord
shall distraine. But for amerciament in a court
baron he shall not distraine.

Also if a man make a lease at Michelmass for
a yere, reseruing a rent payable at the feast of y
Annunciacion of our Lady and saint Mich.
Archangel, in that case he shall distraine for the
rent due at our Lady day but not for y rent due
at Michelmass because the terme is expired.

It. ij

Nota
if this agree the
the bnde of y expo-
sitio of y teres of
lawe fo. 104.
But

The ix. chapter.

But if a man make a lease at the feast of Christmas for to endure to the feast of Christmas next following, that is to saye for a ycare reseruing a rent at the aforesaid feast of the Annunciation of our Ladye and sainte Michael the Archangel ther he shal distraine for both & reïs as long as the terme continueth, that is to saye til that aforesaid feast of Christmas.

And if a man hane lande for terme of lyfe of Ihon at Stoke and maketh a lease for terme of yeres reseruing a rent, that rent is behinde & Ihon at Stoke dieth, there he shal not distraine because his reuerſion is determined.

Also if he to whose vse leſſes bene ſeiled maketh a lease for terme of yeres, or for terme of life, or a giſte in taile reſeruinge a rent, there the reſeruacion is good and the leſſour ſhal diſtraine.

Also if a towneſhip be amerced & that neighbours by aſſent aſſeſſeth a certein ſumme vpon euery inhabitant, & agree that if it be not paid by ſuch a day, & certein parſons therto aſſigned ſhal diſtraine. In this caſe the diſtreſ is lawſul if lord and tenant be, & if & ternaunte do holde of the lord by ſealty and rent, and the lord dothe graunt away the ſealty reſeruing the rent, and the tenant attourneth in this caſe hee that was Lord may not diſtraine for the rente, for it is become a rent ſecke. But if a man make a gyfte in taile to another reſeruing ſealty and certein rente, and after that hee graunteth awaye the ſealty reſeruing the rent & the reuerſion to hym ſelfe, in this caſe hee ſhal diſtrayne for the rente for,

*Reſeruinge to the lord
the leſſor & the tenant
the reuerſion & the lord*

The x. chapter. fo. 67

for the graunte of the fealty is boide for the fealty can not be severed fro the reuerſion. Also for heriote ſervice the Lord ſhal diſtraine & for heriote cuſtome hee ſhal ceſſe and not diſtraine. Also if a rent bee aſſigned to make a particiō or aſſignment of dower egal. hee or ſhe to whom that rēt is aſſigned may diſtraine and in al theſe caſes aboue ſaide where a man maye diſtrayne he may not diſtrein in the night, but for damages feſant, that is to ſaye, where beaſtes doe hurt in his ground he may diſtrayne in y night. Also for waſtes, for reuerſions, for accompts for debts vpon contrades or ſuch other no man may lawfully diſtreine.

Tempore H. 8. Ric.
Hart. 6 in fine
8. H. 7. 10. 6.
7. E. 6. 2. 96.
19. 2. 2. 96. Hart. 5.

The viij. question of the Student.

The x. chapter.

I f a man doe a trespas and after make his executour and dye befoze any amēdes made whe ther be his executours bounde in conſcience to make amēdes for the trespas if they haue ſufficient goods therto, though there be no remedy againſt them by the law to compel thē to it. D. It is no doubt but they are bound therto in conſcience befoze any other deede in charity & they may do for him of their own deuocion S. Than would I wit if the teſtatour made legacies by his wil, whether the executors be bound to do firſt, that is to ſay, to make amēdes for y trespas or to pay the legacies, in caſe they haue no goods to do bothe, D. To paye legacies
R. ij. for

The x. chapter.

For if they should first make recompence for & trespass and than haue not sufficient to paye the legacies: they shoulde bee taken in the lawe as swasters of their testatours goods for they were not compellable by no lawe to make amendes for the trespass because euerye trespass dieth with the person, but the legacies they shoulde be compelled by the law spiritual to fulfill and so they should be compelled to paye & legacies of their owne goods, and they shal not be compelled thereto by no lawe ne conscience, but if the case were that hee leaue sufficient goods to paye both, then mee thinkethe they be bounde to doe bothe, and that they bee bounden to make amendes for the trespass before they may do any other charitable deede for the testatoure of their owne minde as I haue said before, except the funeral expenses that be necessary whiche muste be allowed before al other thinge. S. And what the prouing of the testament. D. The ordinarie may nothing take by conscience therefore, if there be not sufficient goodes beside for the funeralles to paye the debtes & to make restitution. And in likewise the executours be bound to pay debtes vpon a simple contrate before any other dede of charity that they may do for their testatour of their own deuotion though they shal not be compelled thereto by the lawe. S. And whether thinkest thou that they be bound to do first, that is to say, to make amendes for the trespass or to paye the debtes vpon a simple contract. D. To pay the debtes for & is certain and the trespass is arbitrable. S. Than

Mark. 94. a.

Than for the plainer declaracion of this matier
 and other like I pray thee shew me thy minde
 by what laswe it is & a man maye make execu-
 tours and that the executours if they take vpon
 them be bound to perfourme the will & dispose the
 goodes that remayne for the testatoure. D. I
 think & it is best by the lawe of reason. S. And
 me thinketh that it shoulde be rather by the cu-
 stome of the realme. D. In al countries and
 in all lands they make executours. S. That
 semeth to be rather by a general custome, after
 & the lawe and custome of property was brought
 in than by the lawe of reason, for as long as all
 things were in common, there were no execu-
 tours ne willes ne they needed not than. & whā
 property was after brought in: me thiketh that
 yet making of executours & disposing of goods
 by will after a mans death foloweth not neces-
 sarily thereupon, for it mighte haue beene made
 for a lawe that a man shoulde haue had the pro-
 party of his goodes onely duringe his life, and
 that than his debtes paid, al his goodes to haue
 ben lefte to his wife and childzen or next of hys
 kynne without any legacies making therof, and
 so might it now be ordeined by statute, and the
 statute good and not against reason, wherfore
 it appeareth that executours haue no auctho-
 rity by the lawe of reason but by the lawe of man.
 And by the old lawe and custome of this realme
 a man may make executours and dyspose hys
 good by his will, and than his executoures shal
 haue & executiō thereof, & his heires shal haue
 nothing but if any particuler custome helpe and

the executours shal also haue & whole possessiō
 and disposicion of al his goods and chattels as
 wel real as personal, though he no worde bee ex-
 pressely spokē in & wil that they shal haue them
 and they shall haue also accions to recouer all
 debtes due to the testatour though al debtes and
 legacies of & testatour be payde before and shall
 haue & disposicion of them to the vse of the testa-
 toure and not to their owne vse, and some thin-
 keth that & auctoritie to make executours and
 & the shal dispose the goodes for the testatoure
 is by the custome of the realme. But thā I thik
 as thou saiest, & by the lawe of god they shal be
 bound to doe the first, & is to the most profite of
 the soule of their testatour where the dysposiciō
 thereof is left to their discrecion, and that I a-
 gree wel is to paye debtes vpon contractes and
 to make amendes for wronges done to & testa-
 tour though he bee compelled thereto by the
 lawe and custome of the realme if there be none
 other debt nor legacy & they bee bound to paye
 by & lawe, but if two seuerall debtes be payable
 by & lawe, than which debte they shal do firste in
 conscience: I am somewhat in doubte. D.
 Let vs first know what the cōmon lawe is ther
 in. S. The common lawe is & if the testatoure
 owe x. li. to two men seuerally by obligacyon or
 by such other maner that an action lieth against
 his executours therof by the lawe, and hee le-
 ueth goods to paye the one and not bothe, & in
 & case he that can first obtaine hys iudgemente
 against the executours shal haue execucion of
 the whole and the other shal haue nothings, but
 to

to which of them he shal in conscience owe his fauour: the common laswe teacheth not. D.

¶ Herein must be considered the cause why the debts began and than hee must after conscience beare his lawful fauour to him that hath y clearest cause of debt. & if both haue like cause than in conscience he must beare his fauour wher is most neede and greatest charitie.

S. May the executoures in that case delaye that accion that is first taken if it stande not with so good conscience to bee payde as another debt wherof no accion is broughte and procure y an accion maye bee brought thereof and than to confesse that accion that he may so haue execution, and than the executores to bee dyscharged againste the other. D. Why maye he not in that case pay the other without accion and so be discharged in the law againste the firste. S.

No verely for after an accion is taken the executour may not minister y goods so but that he leaue so much as shal pay the debt wherof the accion is taken, and if he doe hee shall paye it of his owne goods, excepte an other recouer and haue iudgement against him hanging that accion & that without couin.

D. Than to aunswere to thy question, I think y by delaies that bee lawfull, as by Essoigne, emparlaunce, or by a Dilatorie plee in abatement of the writ that is true, he maye delay it. but he maye plede no vnttrue plee to prefferre the other to his duitie. But I praye thee what is the law of legacies restitution & debts vpo cōtracts y pcase ought rather after charity to

The x. chapter.

to be paid than a debt vpon an obligation what may the fauour of y^e executour do in those cases
S. Nothing, for if they either persourne legacies, make restitutions, or pay debts vppon contracts and kepe not sufficient to pay debtes which they are compellable by the laswe to paye that shal be taken as a *Deuastauerunt bona testatoris*, that is to say, that they haue wasted the goods of their testatoure, and therefore they shal bee compelled to paye the debtes of theyre owne goods, and so it is if they pay a debt vpon an obligation wherof the day is yet to come though it bee the clerer debt and y^e be the moze charitie to haue it payde. **D.** yet in that case if hee to whom the debte is al readye osweynge forbear til after that daye of the other oblygacion is past, then he may paye him without danger. **S.** That is true if there bee no accion taken vpon it, and though there be, yet if that accion maye bee delayed by lawefull meanes as thou haste spoken of befoze, till after y^e daye and that an accion is taken vppon it, than may the executours confesse y^e accion & than after iudgement he may pay the debt without daunger of y^e law. **D.** Is not that confessinge of the accion so done of purpose a couin in the law? **S.**

No verely for couine is where the accion is vntrew, and not where the executours beare a lawfule fauoure. **D.** The ordinarie vpon the accompte in all the case befoze rehearsed wil regarde muche what is best for the testator. **S.** But he may not driue them to accompte againste the order of the common lawe.

The

The ix. question of the
Student.

The xi. chapter.

A Man is indebted to an other vppon a simple contract in xx. li. and he maketh his wil & be-
questeth xx. li. to Henry Har: & dieth, and leueth
goods to his executours only to bury him with
& to perfourme y^e said legacy, and after y^e said ex-
ecutourz delivereth the goods of their testatour
in parfourmaunce of y^e said bequest, whether is
he to whō the bequeste is made bound in consci-
ence to pay the saide debte vppon y^e simple con-
tract to the said Henry Harie or not. D. Is
hee not bound therto by the laswe. S. No be-
rely. D. And what thinkest thou he is in cō-
science. S. I think y^e he is not bound therto
in conscience, for he is neither ordinarie admini-
stratour, nor executour. And I haue not heard
y^e any man is bound to pay debts of any man y^e
is decessed; but he be one of those three, for the
goods y^e the testator left to y^e executors were ne-
uer charged wth y^e debt, but y^e son of the testator
while he liued was onely charged with y^e debte
& not his goods and his executours y^e represent
his estate. after his death hauing goods therto
of y^e testatours be charged also wth y^e debts & not
y^e goods. And therefore if an executour geue a-
way or sell al y^e goods of the testatour or other-
wise wast them, he y^e hathe the goodes is not
charged with y^e debtes in laswe nor conscience,
but y^e executours shal be charged of their owne
goodes

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20. 10. 6.
 21. 9. 6.
 22. 8. 6.
 23. 7. 6.
 24. 6. 6.
 25. 5. 6.
 26. 4. 6.
 27. 3. 6.
 28. 2. 6.
 29. 1. 6.
 30. 0. 6.

D. Than shew me thy minde by what lawe it is grounded as thou thinkest that executores be bound to paye debts before legacies, whether is it by the lawe of God, or by y^e lawe of reason, or by the lawe of man as thou thinkest? **S.** I think that it is both by the lawe of reason and by the lawe of God, for reason wil that they shal doe first that is best for the testatoure, and that is to pay debts that his testatour is bounde to pay before legacies that hee is not bounde to. And also by the lawe of god they are bound to pay the debts first, for sith they are bounden by y^e lawe of God to loue their neighbour, they are bound to do for hi y^e shalbe best for him whā they haue taken the charge thereto, as executoures doe whan they agree to take the charge of that wyl of

of their testatour vpon them, and it is better for the testatour that his debtes bee paid. wherefore his soule shal suffer paine: then that his legacies be perfourmed, wherefore hee shall suffer no paine for the perfourming of them.

And that is to be vnderstand where the legacy is made of his owne free will and not where it is made as a satisfaction of any duty. And after y^e the saying of saint Gregory y^e very true profe of loue is the deede. But this man is not in that case, for he toke neuer the charge vpon hym to pay the debtes of the testatoure. And therefore he is not bound to them in law nor conscience as me semeth. But rather the executors should haue ben ware or they had payde the legacies seeing there were debtes to pay. ¶ The executors might none otherwise haue done in this case but to pay the legacies for the they should haue ben compelled by the law to haue payde, and so they could not haue bene to haue payde the debte vpon a contrarie. And therefore they did wel in perfourming of that legacye, but hee to whō the legacy was made ought not to haue taken them but ought in conscience to haue suffered them to haue gone to the paymēt of y^e debt and such he did not so but tooke them where hee had no right to the, it semeth that whē he toke the, he toke wth the y^e charge in cōscience to pay y^e debt, for lithe the executors were cōpellable by the law to perfourme that bequest & not to pay the debt, therefore when they perfozme that bequeste, they were discharged there by againste hym that the debt was owinge to, in the lawe
and

The xi. chapter.

and conscience and than y charge rested vpon him that tooke y goods where he ought not in conscience to haue taken them, but if it had bene a debt vpon an obligacion or suche other debte whereupon remedy hath bene had againste the executours by the lawe, I there suppose that though the executours had perfourmed the legacy, that yet he to whom y legacye was made and perfourmed had not bene charged in conscience to y payment of y debt for the executours stode stil charged thereto of their owne goods and he to whom y bequest was made was only bound in conscience to repay that he receiued, to y executours because he had no ryghte to haue receiued it, for against the executours he had no right thereto. S. Then it semeth in thys case y in likewise he to whom that bequest was made, should repay that he receiued to the executours and than they to pay it rather then hee. D.

The executours haue no farther medling with it as this case is, for when they perfourmed the bequest they were discharged against bothe the other in law and conscience, & also hee to whom y bequest was made, stode not in this case charged to the executours, for against them he had good title by the lawe, and so this charge standeth only against him that the debte is owinge to, and the same law that is in this case vpon a debt vpon a contract is if y testatour had done a trespass whereupon he ought to haue made restitution, that is to saie, y hee to whom y bequest is made, is bounde to make the amendes for the trespassse, for it shoulde bee no discharge to hym
to

to pay it againe to the executoꝝ without they
paide it ouer, & it were vncerteine to him whe-
ther they would pay it oꝝ not.

And therefore to be out of perill: it is ne-
cessary that he pay it him selfe & than is he sure
ly discharged against al men.

CThe x. question of the
Student.

CThe xij. charter.

A Man seised of certein land in his demeane as
of fee, hath issue two sonnes and dieth seised,
after whose death a stranger abateth, & taketh
þ profit, and after the eldest sonne dieth woute
issu and his bzother bringeth an assise of Mort
dauncester as sonne and heire to his father not
making mencion of his bzother and recouereth
þ land with damages fro the death of his father
as he may wel by þ law, whether in this case is
þ yonger bzother bound in conscience to pay to þ
executoꝝ of þ eldest bzother þ value of þ pro-
fits of the saide lande þ belongeth to the eldeste
bzother in his life oꝝ not? D. What is thine oppi-
nion therein. S. That like as the saide profits
belongeth of righte to the eldest bzother in his
lyfe, and that hee had full auctorite to haue
released as well the right of the saide lande as
of the saide profits, whyche release shoulde
haue beene a clere barre to the yonger bzother
foꝝ euer. That the righte of the sayde damages
whyche

The xii. chapter.

Which bee in the lawe but a chattel, belonge to his executours and not to the heire. for no manner of chattel neither real nor parsonal shall not after the lawe of the realme dyscende vnto the heire.

D. Thou saydest in the case nexte before that it is not of the lawe of reason that a man shall make executours, and dispose his goods by hys wil, & that the executours shall haue the goods to dispose but by the law of man, and if it be left to the termination of the law of man.

Than in such cases as the law geueth such chatels vnto the executours, they shall haue good right vnto them, and in suche cases as the law taketh such chatels from them: they bene rightfully taken from the. And therfore it is thought by many & if a man sue a writ of right of ward of a ward & he hath by his owne fee and by the hanging the writ, and his heire sue a resomons accordyng to the statute of Westminster seconde and recouereth, that in that case the heire shall enjoy the wardship againste the executours, and yet it is but a chattell, and they take the reason to bee because of the said statute, and so myghte it be ordained by statute that all wardes shoulde go to the heires & not to the executours. Right so in this case sith the law is suche & the yonger brother shall in thys case haue an assise of Mortdauncester as heire to his father not makynge any mencion of his elder brother and recouer damages as well in the time of his brother as in his owne time, it appeareth that the law geueth the right of these damages to the heire and therfore

The.xij. Chapter. fol.82

foze no recompence ought to be made to the executours as me semeth, & it is not like to a writ of *Apel*, where as I haue lerned in *Latin* (sith our first dialogue) the demaundant shal recouer damages only fro the death of his father, if hee ouerliue the *Apel*, and the cause is, for y^e demaundant though his *Aiel* ouerliued his father must of necessity make his conueyance by hys father & must make him self sone & heire to his father and cosin and heire to hys *Aiel*, & therefore in y^e case if the father ouerliued the *Apel*, the abatour were bounden in conscience to restore to y^e executours of the father the profits run in hys time, for no law taketh them fro him, but otherwise in thys case as me seemeth. **S.** If the younger brother in this case had entred into y^e lād wthout taking any assise of *Mortdācester* as he might if he would, to whom were y^e abatour then bounden to make restitution for those profits as thou thinkest?

D. To the executours of the eldest brother, for in y^e case there is no law that taketh them from them, and therefore the general ground which is that al chatels shall goe to the executours, holdeth in that case, but in this case that ground is broken and holdeth not, for the reason y^e I haue made before, for commonly there is no generall ground in the lawe so sure, but that it sayleth in some particuler case.

The.xi. question of the student.

The.xij. Chapter.

L.i.

B

The xiiij. Chapter

A Man seased of land in fee taketh a wife, and after alieneth the lande & dyeth, after whose death his wife asketh her dower, and the alienee refuseth to assigne it vnto her, but after shee asketh her dower again, & he assigneth it vnto her whether is y^e alienee in this case bound iⁿ cōsciēce to geue the woman damages for the profits of the land after her third part fro the death of her husband, or fro the first request of her dower or neither the one nor the other. **D.** What is the lawe in this case. **S.** By the lawe the woman shal recover no damages, for at the cōmon law the demandāt in a writ of dower shoulde neuer haue recovered damages. But by the statut of Marton it is ordained that wher the husband dyeth seased that y^e woman shal recover damages which is vnderstand the profits of the land sith the death of her husband, & suche damages as she hath by y^e forbearing of it, but in this case the husband died not seased, wherfore shee shall recover no damages by the law. **D.** Yet the law is that immediatly after y^e deathe of her husband the wife ought of right to haue her dower if she aske it though her husband dyed not seased. **S.** That is true.

D. And sith she ought to haue her dower fro the death of her husband it semeth y^e shee ought in conscience to haue also the profits fro the death of her husband though she haue no remedy to come to them by the law, for mee thinketh y^e this case is like to a case that thou putttest in our first dialogue in Latin the. xvij. Chapter.

That if a tenant for terme of life bee diseased & dyed,

The.xiiij. Chapter. fol.83

dis, and the disseysour dieth, and his heir entreteth and taketh the profits, and after he in the reuer-
sion recouereth the lands against the heir as he
ought to do by the lawe, that in y^e case hee shall
recouer no damages by the lawe. And yet thou
diddest agree that in that case the heire is bound
in conscience to pay the damages to the demas-
daunt and so me thinketh in this case y^e y^e feoffee
ought in conscience to paye the damages fro the
death of her husbād seig y^e immediatly after his
death she ought to haue her dower. **S.**

Though she ought to be endowed immediatly af-
ter the death of her husbād, yet she can lay no de-
fault in the feoffee til she demā her dower bpō
the groūd & y^e the tenant be not ther to assigne
it, or if he be there y^e he wil not assigne it, for he
y^e hath the possession of land wherunto any wo-
man hath title of dower, hath good auctorizty
as against her to take the profits til she require
her dower, for euery womā y^e demādeth dower
affirmeth y^e possion of the tenant as against her
& therfore although she recouer it by acciō, she
leueth the reuerſion alway in hym against whō
she recouereth, though he be a disseysour & brin
geth not y^e reuerſion by her recovery to him that
hath right as other tenantes for terme of lyfe
doe. And for thys reason it is that the tenaunte
in a wypt of dower, where the husbāde dyed
seased if he appeare the first daye, may say to ex-
cuse himself of damages that he is and al times
hath ben redy to yeld dower if it had ben demā-
ded, & so he shal not be receimed to doe in a wypt
of cosmage neither in the case y^e thou remēbreſt

¶ ij.

aboue

The xiiij. Chapter

aboue, for in both cases the tenants be supposed by the law to be wrong doers, but it is not so in this case, and so me thinketh it cleere & the feoffe in this case shal neither be bound by law nor conscience to yeld damages for the time & passed before the request, but for the time after & request is greater doubt, howbeit som thinketh him not ther bound to yeld damages because his title is good as is said before, and that it is her defaulte & shee brought not her accion. D. As vnto the time before the request I holde mee content wth thine opinion so & he assigne the doswer when he is required, but when he refuseth to assign it, the I think him bound in conscience to yeld damages for both times though he shal none recover by the law. And first as for the time after the refusal, it appeareth evidently & when hee denyed to assigne her doswer he did against conscience, for he did not & of right to haue done by the lawe, ne as he would should haue ben done to him, & so after & request hee holdeth her doswer fro her wrongfully, and ought in conscience to yeld damages therfore. And as to the defaulte & thou assignest in her, that shee tooke not her accion, & forceth litle, for accions rede not but where the party wil not do that he ought to doe of ryghte. And for that he ought of right to haue done and dyd it not, hee can take none aduauntage, and the as to the damages before & request, me thinketh him also bounden to pay them, for when he was required to assigne doswer and refused. It appereth & he neuer intended to yeld doswer fro the beginnig, & so he is a wrong doer in his own conscy=

The.xiiij.Chapter fo.84

conscience, and moze ouer if the husband die sealed, the law is such & yf the tenant refuse to assigne dower when he is required wherfoze the woman bringeth a writ of dower against hym that in & case & womā shal recouer damages as wel for the time befoze the request as after, and yet he ought not in & case after thynne opinion to haue yelded any maner of damages if he had be ready to assigne dower whē it was demaunded and some thinketh here. **S.** The cause in that case that thou hast put, is for that the statute is general that the demaundant shal recouer damages wher the husband died sealed, and that statute hath ben alwaye construed that where the tenant may not say & he is & hath ben alwaye ready to yeld dower &c. & the demaundant shal recouer damages fro the death of her husband.

But in this case there is no lawe of the realme & helpeth for the demaundaunt neyther commō lawe nor statut, & furthermoze though it might be proued by his refusel & he neuer intended fro the death of & husband to assigne her dower yet & proueth not, but & hee had good right to take the profits of her thirde part for the time as well as he had of his owne two partes: til request be made as is aforesaid, & so me thinketh & notwithstanding & denial he is not bound to yeld damages in this case but for & time of & request & not for the time befoze. **D.** For thys tyme I am content with thy reason.

CThe xij. question of the student.

The.xiiij.Chapter.

L.iiij:

A

The.xiiij.Chapter.

A Man leased of certaine lands knowing that another hath good right and title to them leuieth a fine with proclamacion to the intent hee would extinct the righte of the other man, & the other man maketh no claime within .v. yeares whether may he that leuieth the fine hold y^e lād, in conscience as he may do by the lawe **D.** By this question it seemeth that thou doest agree y^e if he y^e leuieth the fine had no knowledge of the other mans right, that his right should then be extincted by the fine in conscience. **S.** Ye verely, for y^e diddest shewe a reasonable cause why it should be so in our first dialogue in Latin the xxiij. Chapter, as ther appereth. But if he y^e leuieth a fine and that would extinct the ryghte of another, knowing y^e the other had more ryght then he, then I doubt therein for I take thine opiniō in our first dialogue to be vnderstād in cōscience, wher he y^e would extinct former rights by such a fine with proclamacion knoweth not of any former title but for his more suerty if any such former right be: he taketh the remedy y^e is ordained by the lawe. **D.** Whether doest thou meane in this case that thou putttest now y^e hee that hath right, knoweth of the fine and wilfully letteth the .v. yeres passe without claime or y^e he knoweth not any thing of the fine. **S.** I pray thee let me know thine opiniō in both cases and whether thou think that he that hath right be barred in eyther of the cases by conscience as hee is by the law or not. **D.** I wyll with good will hereafter, shew thee my mind therein: but at this time I pray thee geue a litle sparing & proceede

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cede now for this time to some other question.

The.xiij. question of the student

The.xv.Chapter.

A Man seased of certaine landes in fee hathe a daughter whiche is his heire apparaunt, the daughter taketh a husband and they haue issue: & father dyeth seased, & the husband as soone as he heareth of his death goeth toward the lande to take possession, and befoze he can come ther: his wife dieth, whether ought he to haue & lande in conscience for terme of his life as tenant by the curtesye because he hath done & in him was to haue had possessiō i his wifes life, so & he might haue ben tenant by the curtesy according to the law, or & he shal neyther haue it by the law nor conscience. **D.** It is clearly holden in the law & he shal not be tenant by the curtesye in thys case, because he had not possession in deede

S. We verely, and yet vpon a possession in lawe a woman shal haue her dower, but no man shal be tenat by & curtesy of lād wout his wife haue possession in deede.

D. A man shalbe tenant by the curtesy of a rēt though his wife die befoze the day of paiment, & in likewise of an aduowsō though she dy befoze the auoidance. **S.** That is trouthe, for & olde custome and maxime of & law is & hee shal be so, but of lād ther is no maxime & serueth hī but his wife haue possessiō in dede. **D.** And what is the reason that there is suche a maxime in the

L.iiij.

law

law of the rent & of the aduowson rather the of land, when the husband doth as much as in him is to haue possession and cannot. S. Some assigne & reason to be because it is impossible to haue possession in dede of & rent or of aduowson before the day of payment of the rent, or before & avoidance of the aduowson. D. And so it is impossible that he shall haue possession in dede of land if his wife dye so soone that he may not by possibilitie come to the lande after her fathers death, and in her life as the case is. S.

The law is such as I haue shewed thee before & I take & very cause to be for & ther is a maxime serueth for the rente and the aduowson, and not for the landes as I haue said before, and as it is said in &.viij, Chapter of our first dialogue it is not alway necessary to assigne a reason or consideration why the maximes of & law of England were first ordeined & admitted for maximes but it suffiseth that they haue been alway taken for law and that they be neither contrary to the law of reason nor to & law of god as thys maxime is not, and therefore if the husband in thys case be not holpen by conscience he cannot be holpen by the law.

D. And if the law help him not, conscience can not help him in this case, for conscience must alway be grounded vpon some law, and it cannot in this case be grounded vpon & law of reason nor vpon & law of god, for it is not directly by those laws & a man shalbe tenant by the curtesye, but by the custom of & realme. And therfore if & custom help him not, he can nothing haue in this case by

by conscience, for conscience neuer resisteth & law
 of man nor addeth nothing to it, but where the
 law of man is in it self directly against the lawe
 of reason or els the law of god, & then properlye
 it cannot bee called a lawe but a corruption, or
 wheret he general groundes of the lawe of man
 woꝝketh in any particuler case against the said
 lawes as it may do, and yet the law good as it
 appeareth in diuers places in our first dialogue
 in latin, or els, wher ther is no law of man pro-
 uided for him that hath right to a thinge by the
 lawe of reason or by the law of God. And then
 somtime there is remedy geuen to execute & in
 conscience, as by a Subpena but not in al cases
 for somtime it shalbe referred to & conscience of
 the party, and vpon this ground (that is to say)
 that when there is no title geuen by the comon
 law, & there is no tytle by conscience. Ther bee
 diuers other cases wherof I shal put some for
 an exāple. As if a reuerſiō be graūted vnto one
 but there is none attourneāt, or if a new rēt be
 graūted by word without dede: there is no re-
 medy by consciēce vntles the said graūtes were
 made vpd consideration of money or such other
 And in likewise where he & is leased of landes
 in fee simple maketh a wil therof, & wil is void
 in cōscience because the grounde serueth not for
 him wherby the conscience shoulde take effect, &
 is to say, the law, and if the tenant make a feoffe
 ment of the land that he holdeth by priority and
 taketh estate againe & dyeth (hys heire within
 age) the lord of whom the land was first holden
 by priority shal haue no remedy, for the body by
 conscy-

The .xvj. Chapter.

conscience, for the law & first was with him, is now against him, and therefore conscience is altered in likewise as the law altereth, and diuers and many cases lyke be in y^e law & were to long to rehearse now. And thus me thinketh & if the law be as thou saiest: & husbā in this case hath neither right by the lawe nor conscience.

The xiiij. question of the student.

The .xvi. Chapter.

A Rent is graūted to a mā in fee to perceiue of two acres of land, & after the grauntour enfeoffeth the graūtee of one of y^e said acres, whether is the whole rent extinct therby in cōsciēce as it is in the lawe **D.** This case is somewhat vncertaine, for it appereth not whether y^e grauntour enfeoffed him on trust, or & he gaue the acre to him of his meere motion to the vse of the said feoffee, or els & y^e feoffment was made by a bargain, & if it were but onely a feoffment of trust, thē I think y^e whole rēt abideth in conscience though it be extinct in the law, & firste y^e it continueth in y^e case in conscience, for y^e part y^e the graunter hath to y^e vse of y^e graūtour, it is euident, for he may not take y^e profits of y^e lande & it is against cōsciēce & he should leese both, & in likewise it abideth in cōsciēce for the acre & remaineth in y^e hāds of y^e graūtour, though it be extinct in the law for there was a default in the grauntoz & hee would make the feoffment to y^e graūtee as wel as ther was in y^e grātee to take it

it. And it is no conscience þ̄ of hys own default he should take so great auail to be discharged of þ̄ whole rent, seing þ̄ the feoffement was made to his own vse. And if þ̄ feoffement were made vpon a bargain & a cōtract betwene thē, thē it is to see whether they remēbred þ̄ rēt in their bargain, or þ̄ they remembred it not, and if they remēbred it in their bargain and contract, thē conscience must folow the bargaine as thus, if they agreed þ̄ the graūtee should haue the rent after the porcion in the other acre. thē by cōscience he ought to haue it though it be extict in þ̄ law, And if they agreed þ̄ the whole rent shold be extinct and made their price accorde, then it is extinct in law and conscience, and if they clerely forgoat it and made no mencion of it, or for lack of cunning toke the law to be that it should continue in the other acre after the porcion & made their price accorde, pondering only the value of the acre þ̄ was sold: then me thinketh, it doth continue in conscience after the porcion, & if the feoffement were made to the vse of the graūtee then it semeth the whole rent is extinct in law & conscience. S. Then take that to be the case þ̄ is to say that the feoffement was made to the vse of the grauntee. D. What is thē thine opinion therein.

S. That the rent should abide in conscience after the porcion for þ̄ acre remaining in the hāds of the grauntour notwithstanding it be extinct in the law. Doctour. Then shewe me thyne opinion in thys þ̄ I shal aske thee. Of what law is it þ̄ graūtees of rent and of suche other
pro=

The .xvj. Chapter.

profits out of lands may be made and that they
shalbe good and effectual to the graūtees, whe
ther is it by the law of reason or by the lawe of
God or by the custom and law of the realme. S.
I think it is by the law of reason, for by y^e same
reason that a man may geue away al his landes
he may as it semeth geue away the profits ther
of or graunt a rent out of the land if he wil. D.
But then by what law is it y^e a man may geue
away his landes, I trow by none other law but
by the custom of y^e realme, for by statut all alie-
nacions and gifts of landes may bee prohibite, &
then that reason proueth not that grauntes of y^e
profits of lād or of a rēt should be good because
he may alien the land, if alienaciōs of lād be by
custom and not by the law of reason as I sup-
pose it is, wherof I touched somewhat i our first
dialogue in Latin the .xix. Chapter. And also if
grantes should haue their effecte by the lawe of
reason, thē reason would y^e they should be good
by the only word of y^e grauntour as well as by
his dede, and that is not so, for without dede y^e
graunt of rent is void in y^e law, and so me thin-
keth that grauntes haue their effect only by the
lawe of the realme. S. (Admyt it to bee so)
What meanest thou thereby. D. I shal shew
thee hereafter as I shal shew thee y^e cause why
I thinke the rent is extinct in consciēce as wel
as in law. And first as I take it the reason why
it is extinct in the law, is because the rent by the
first grant was goyng out of both acres, & was
not going part out of the one acre and part out
of the other, but the whole rent was going out
of

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of both, and then when the graunte of his own
 folow take estate in the one acre wherby that
 acre is discharged, then y other acre also muste
 be discharged vnles it should be apporcioned & y
 law wil not y anye apporcionment shoulde bee
 in y case, but rather in asmuch as the party hath
 by his owne act discharged the one acre: y lawe
 dischargeth also the other, rather then to suffer
 the other acre to be charged contrary to y forme
 of the graunte, for this rent beginneth al by the
 act of the party and as I haue heard, is called a
 rent against common right, wherefore it is not
 fauoured in the law as a rent service is, and the
 me thinketh that for asmuch as it is not groun-
 ded by the law of reason that grauntes of rente
 shold be made out of lād, but by y custōe & lawe
 of the realme as I haue saide before, that so in
 likewise it remaineth to the law and custome of
 the realme to determine how long suche rentes
 shal continue. And when the lawe iudgeth suche
 rents to be voide: I suppose that so doth consci-
 ence also, except the iudgement of the law be a-
 gainst the law of reason or the lawe of God, as
 it is not in this case, for in this case he y taketh
 the feoffement hath profit by the feoffement and
 knoweth y he hath such a rent out of the lande,
 and y his purchase shoulde extincte it, wherby
 it appeareth that hee assenteth vnto the lawe
 whereto he was not compelled, and that is hys
 own act and his owne default so to do, whiche
 shal extinct his whole rent as wel in conscience
 as in the lawe. But yf hee haue noe profite of
 the lande or bee ignoraunt that hee hath such a
 rent

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rent out of the land whiche is called ignozaunce of the dede, oz if he bee ignozaunt that the lawe would extinct his whole rēt therby which is called ignozaunce of the law, then me thinketh it remayneth in conscience after the porcion. S.

Ignozaunce of the law oz of y^e dede helpeth not but in few cases in the lawe of England. D.

And therfore it must be reformed by conscience that is to say by the law of reason, for when the general maximes of the law be in any particuler cases against y^e law of reason as this maxime seemeth to be, because it excepteth not thē y^e be ignorant though it be a ignozaunce inuisible thē doth it not agree with the law of reason. S. Me thiketh y^e ignozaunce in this case helpeth litle, for when a man buyeth any lād oz taketh it of y^e gift of any other, he taketh it at his peril, so that yf the tytle be not good: ignozaunce cannot help, for y^e buyer must beware what he buyeth, & so in this case if the taking of the one acre should extinct y^e whole rent in conscience if he were not ignorant so me thinketh it should in likewise extinct it also though he be ignorant of the law oz of y^e dede for every mā must bee compelled to take notice of his own title: & out of what lād his rēt is going and so me thinketh ignozaunce is but litle to be considered in this case.

D. If a man buy lande oz take it of the gift of another: it is reason y^e he take it wth the peril though he bee ignozaunt that another hath the ryght, for it were not standing with reason that his ignozaunce should extinct the ryght of another, but in this case ther is no doubt of y^e right of

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of the land, but al the doubt is how the rēt shall be ordred in conscience if he ꝑ hath the rēt take part of the land, & therin is great diuersitye betweene him ꝑ is ignoraunt in the lawe, and hym that knoweth the law, and knoweth wel also ꝑ he hath a rent out of that land and other . For I put case that he asked counsaile of the grauntour himself therein, and he saying as he thought tolde him that the taking of the one acre should not extinct the rent but for the porcion, and so he thinking ꝑ law to be, toke the other acre of hys gift. It is not reasonable in ꝑ case, that ꝑ ignorance should save the rent in conscience.

S. yes, for ther the grauntour himselfe is partye to his ignorance and is in maner the cause therof. D. And mee thinketh all is one yf any other had shewed him so, or if he asked no counsaile at al, for me thiketh it suffiseth in thys case that hee be ignoraunt of the lawe, for why, it is more harde in this case to proue ꝑ rent shoulde be extinct in cōscēce though he know it should be extinct in the law, thē to proue ꝑ it cōtinueth in conscience after the porcion if he be ignorant, and thou thy self were of the same opinion as it appeareth in the beginning of this presēt Chapter, but if ꝑ opinion were true it would be hard to proue but that the said general maxime were wholly against reason, & then it were voyde, but I have sufficiently answered thereto as me seemeth, and that it is extinct in the law and also in conscience, except ignorance help it to be apporcioned. And moreouer forasmuch as apporcionment is suffered in the law wher part of the land

discens

The.xvij. Chapter

discendeth to the graunt because no default can be assigned in him some thinketh no default can be assigned in him in conscience when hee is ignorant of the law or of the dede though such ignorance do not excuse in the law of the realme.
S. I am content wth thine oppinion in thys behalfe at this time.

The.xv. question of the student.

The.xviij. Chapter.

A Man graunteth a rent charge out of two acres of land, and after the grauntour entfeofeth Henry Hart in one of the said two acres to the vse of the said Henry Hart and of his heirs and after the said Henry Hart entending to extinct al the rent causeth the said acre to be recovered against him to his owne vse in a writ of entre in & poss in the name of the grauntee and of other after the common course, the grauntee not knowing of it, and by force of the said recovery the other demandants entre and dye, liuinge & grauntee, so that & grauntoz is seased of al by the surynour to the vse of the saide Henry Hart, whether is the saide rente extinct in conscience in part or in al or in no part? **D.** I am in doubt of the law in this case. **S.** In what point **D.** Whether & whole rent be going out of & ad & remaineth in & hāds of & grātoz because & grātee cōeth to & lād by way of recovery, or & it shalbe extinct in & law, but after & porciō because & grātee hath not the acre to his own vse, or that the whole

Whole rent shalbe extincte in the lawe. S.

The rēt can not be whole going out of the acre that the graūtour hath, for this recouerie is vpon a fained title and the grauntour because hee is straūge to it shalbe wel receiued to falsifie it. But if the recouerie had bene vpon a true title, than it had ben as thou saist, for if the grauntee recouer the one acre against the grauntour vpon a true title, the grauntour shal paye the whole rent out of that land that remaineth in his hand & as to the vse it maketh no matter to the graūtour as to the lawe in whom the vse bee, for the possession wout the vse extinguisheth the whole rent as against him in the law as well as if the possession and vse were both ioined together in the grauntee. D. Chan me thinketh that the sayde Henry Harte is bounde in conscience to pay the grauntee the rent after the porcion of y^e acte that was recouered, for it can not stand wth conscience that he should lose his rent and haue no profites of the land. S. Chan of whom shall he haue the other porcion of his rent.

D. Is the lawe cleare that the acre that the grauntour hath, shalbe in this case discharged in the lawe? S. I take the lawe so

D. And what in conscience? S. As against the grauntour me thinketh also it is extincte in conscience for the reason y^e thou haste made in the xvi. chapter for it is all one in cōscience in this case as against the grauntour whether the recovery were to the vse of the graūtee or not, specially seing that the graūtour is not priuy to the recovery, for the vnitie of possession

The xvii. chapter.

is the cause of extinguishmēt of the rent against the grauntour both in law and conscience where so ever the vse be, but if the grauntour had ben priuy to the cause of the extinguishment as hee was in the case that I put in the laste Chapter where the grauntour enfeofed the grauntee, of one of the acres to the vse of the grauntee, ther it is not extinct in conscience in that acre that remaineth in the handes of y^e grauntour though it be extincted in the lawe, because he was priuie to the extinguishment himselfe, but hee is not so in this case, & therfore it is extinct against him in law and cōscience. And therefore me thinketh that the grauntee shall in conscience haue the whole rente of the said Henry Harte that caused the said recovery to be had in his name, for in him was al the default, but it is to be vnderstand that in all the cases where it is sayde before in this chapter or in the chapter next before that the rent is extincte in the lawe and not in conscience, that in such case al the remedies that the party might first haue had for the rent at the common law by distresse, assise, or otherwise are determined, and the party that oughte to haue the rent in conscience shalbe dyuen to sue for his remedy by Sub pena. D. I am cōtēt wth thy cōcept in this matter for this tyme.

The xvi. question of the
Student.

The xviij. chapter.

The xviii. chapter. fo. 91

A Villaine is graunted to a man for terme of life, the villaine purchaseth the landes to hym and to his heires, the tenant for terme of life entreth, in this case by the lawe hee shal enioy the landes to him and to his heires, whether shall he do so in likewise in conscience.

part 20

D. We thinketh it first good to see whether it maye stande wth conscience that one man maye claime another to be his villeine, and if he maye take from him his landes and goodes, and put his bodye in prison if he wil, it seemeth he loneth not his neighbour as hym selfe that doth so to him.

S. That lawe hath bene so longe vsed in this realme and in other also, and hath bene admytted so longe in the lawes of this realme, and of diuers other lawes also and hath ben affirmed by Bishops, Abbots, Priors, and many other men bothe spiritual and tempozal whiche haue taken aduantage by the saide lawe, and haue seyled the landes and goodes of their villeynges thereby, and cal it their right enheritaunce so to doe, that I thinke it not good nowe to make a doubt, ne to put it in argument whether it stand wth conscience or not, and therefore I praye thee, admyttinge the lawe in that behalfe to stande in conscience, shewe me thine opinion in the question that I haue made. **D.** Is the lawe cleare that he that hathe the villaine, but onely for the terme of life shall haue the landes that that villeine purchaseth in fee to him and to his heires. **S.** Ye verely I take it so. **D.** I should hane takē the law otherwise, for if a feig

M. 9.

no ye

The xviii. chapter.

noꝝ be graunted to a man foꝝ terme of life and the tenant attourne, and after ꝑ lande eschete & the tenant foꝝ terme of life entreth, he shal haue there none other estate in the land than hee had in the seignory, and me thinketh that it shoulde be lyke law in this case, and ꝑ the loꝝd ought to haue in the land but such estate as hee hath in the villeine. **S.** The cases be not a like, foꝝ in ꝑ case of the eschete the tenant foꝝ terme of lyfe of the seignory, hath the landes in the lieu of the seignory, that is to saye, in the place of the seignory and the seignory is clearely extincte but in this case he hath not the lande in the lieu of the villeine, foꝝ he shal haue the villeine styl, as he had befoꝝe, but he hath the lands as a pꝑ- fite come by meanes of the villeine whiche hee shal haue in like case as the villein had them ꝑ is to saye, of all goods and cattels he shall haue the whole pꝑerty & of a lease foꝝ terme of yeres he shal haue ꝑ whole terme, and foꝝ terme of life he shal haue the same estate, the loꝝde shall haue the lande duringe the life of the villeine and of lande in fee simple, and of an estate taile that the villein hath, the loꝝde shal haue the whole fee simple, althoughe he had the villeine but onelye foꝝ terme of yeres, so that hee entre oꝝ lease ac- cording to the laswe befoꝝe the villeine alpen, oꝝ els he shal haue nothing.

D. Merely and if the lasw be so, I thinke con- science foloweth the lasw therin, foꝝ admitting that a man may with conscience haue an other man to bee his villeine, the iudgement of the laswe in this case as to determine what estate ꝑ

Loꝝd

part 10

Lord hath in the land by his entre is neither against the law of reason nor against the law of God, and therefore conscience must follow the law of the realme, but I pray thee let me make a little digressiō to heare thine opiniō in another case somewhat partaining to the question, and it is this, if an executour haue a villeine, & his testatour had for terme of yeres, and he purchaseth lands in fee, and the executour entreth into the lande. what estate hath he by his entre.

S. A fee simple, but that shalbe to the behoue of the testatour and shal be an assise in his handes. D. Well then I am contented with thy conceipt at this time in this case & I pray thee proceede to another question. S. For asmuch as it appeareth in this case and in some other be fore that the knowledge of the law of England is right necessary for the good ordering of conscience. I would heare thine opiniō, if a mā mistake the law what danger it is in conscience for the mistaking of it. D. I praye thee put some case in certaine thereof that thou doubttest in, and I will with good wyll shewe thee my minde therein, for els it will be somewhat long or it can be plainely declared, and I would not be tedious in this writinge.

The xviij. question of the Student.

The xix. chapter.

¶ ij.

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33. H. 8. Brooke. l. 46. c. 7.
El. 292. a. 115. 6.

The xix. chapter.

A Man hath a villeine for terme of life, the villeine purchaseth landes in fee as in the case of the laste chapter and the tenaunte for terme of life entreth, and after the villein dieth he in the reuerſion pretending that the tenaunt for terme of life hath no thinge in the lande but for terme of life of the villeine, asketh counsaile of one that sheweth him & hee hath good righte to the land, and that hee may lawfully enter and thorough that counsaile he in the reuerſion entreth, by reason of the which entre great suits and expenses folowe in the lawe to the greate hurte of both parties. What danger is this to hym that gaue the counsaile. **D.** whether meanest thou that hee that gaue the counsaile gaue it wittingly against the lawe, or that hee was ignorant of the law. **S.** That he was ignorant of the law, for if he knewe the lawe and gaue counsaile to the contrary I thinke him bound to restitution both to him against whom he gaue the counsaile, and also to his client if he would not haue sued but for his counsaile of al that they be dampnified by it.

D. Than will I yet further aske thee this questiō whether he of whom he asked counsaile gaue himself to learning and to haue knowledg of the law after his capacite, or & he tooke vpon him to geue counsaile, & toke no study competent to haue learning, for if he did so, I thinke he be bounden in conscience to restitution of all the costes and damages that he sustained to whom he gaue counsaile if hee would not haue sued but thorough his counsaile. And also to the other

other party, but if a man that hath taken sufficient studie in the lawe, mistake the lawe in some point & is harde to come to the knowledge of, he is not bounden to such restitution, for he hath done that in him is, but if such a man knowing the lawe giue counsaile against the lawe: he is bound in conscience to restitution of costs and damages as thou hast said befoze, & also to make amendes for the vntrouth.

S. What if he aske counsaile of one that hee knoweth is not learned and he geueth him counsaile in this case to enter by force wherof he entreateth. **D.** Than be they both bounde in conscience to restitution, that is to saye, the partye if he be sufficient, & els the counsaillour beecaue he assented and gaue counsaile to the wronge.

S. But what is the counsaillour in that case bounden to him that he gaue counsaile to.

D. To nothing for there was as much default in him that asked the counsaile as in him that gaue it, for he asked counsaile of him that hee knew was ignoraunte, and in the other was defaulte for the presumption that hee woulde take vpon him to geue counsaile in that he was ignoraunt in.

S. But what if he & gaue the counsaile knew not but that he that asked it, had truste in him that he coulde and woulde geue him good counsaile and that he asked counsaile for to order well his conscience how bee it that the truth was that he coulde not so doe. **D.**

Than is he that gaue the counsaile bounden to offer to the other amēdes, but yet the other may not take it in conscience. **S.**

My. iiij.

That

The xix. chapter.

That were somewhat perilous for happylye he would take it though he haue no right to it, except the world be well amended. D. What thinkest thou in that amendement. S. I trust euery man will doe now in this worlde as they would be done to, speake as they thinke, restore where they haue done wzonge, refuse money if they haue no right to it though it be offred them doe that they oughte for to doe by conscience, though that they can not be cōpelled to it by no law, and that none wil geue counsaile but y they shal think to be accozding to conscience, and if they do, to do y they can to refozme it, and not to entermit them self with such matters as they be ignozaunt in, but in such cases to send them y aske the counsaile to other that they shal thinke be moze cunning than they are.

D. It were very wel if it were as thou hast saide, but the moze pitye is, it is not alwaye so and specially there is greate defaulte in geuers of counsaile for some for their owne lucre and profite geue counsaile to comforte other to sue that they knowe haue no right, but I trust ther be but fewe of them, and some for dreade, some for fauour, some for malice, and some vpon considerations & to haue as much done for the another time to hide the trouthe. And some take vpon them to geue counsaile in that they bee ignorant in, and yet whē they know the troughe wil not withdraue that they haue misdōne, for they think it should be greatly to their rebuke, and such parsons folow not this counsaile that saith. (That we haue vnadvisedly done: let vs
with

The xx. chapter. fo. 94

with good aduise reuoke againe.) **S.** And if a man geue counsaile in this realme after as his learning and conscience geueth hym, and regardeth not the lawes of the realme, geueth hee good counsaile? **D.** If the lawe of the realme be not in that case against the law of god nor against the law of reason he geueth not good counsaile for euery man is bound to folowe the lawe of the cuntry where he is, so it be not against the said lawes & so inaye the cases be, & he may binde himselfe to restitution. **S.** At thys time I wil no further trouble thee in this question.

The xbiij. question of the student.

The xx. chapter.

If a man of his meere mocion geue landes to Henry Hart and to his heires by indenture vpon a condicion that he shal yerely at a certein day pay to Ihon at Style out of the same land a certeine rent, and if he do not, & than it shalbe lawfull to the said Ihon at Style to enter &c. if the rente in this case bee not paide to Ihon at Style, whether may the saide Ihon at Style enter into the lands by conscience though he may not enter by the lawe. **D.** May he not enter in this case by the lawe, sithe the woordes of the indenture be that he shal enter. **S.**

No verely for there is an auncient maxime in the lawe that no man shall take aduantage of a condicion but he & is partye or priuy to the condicion, and this man is not partye nor priuy where

vi. 70. 29. et
29. H. 8. Dier.
B. a. /

The xx. chapter.

Wherefore he shal haue none aduantage of it.

D. Though he can haue none aduantage of it as party, yet because it appeareth evidently \bar{y} \bar{y} intente of the geuer was, that if hee were not paide of the rent \bar{y} he should haue the lande. It semeth that in conscience he oughte to haue it thoughe he can not haue it by the law. **S.**

In many cases the entent of the party is voide to all intentes if it be not grounded accordinge to the law. And therefore if a man make a lease to an other for terme of life, & after of his meere mocion he confirmeth his estate for terme of life to remaine after his deathe to an other and to his heires, in this case that remainder is voide in law and conscience, for by the lawe there can no remainder depende vppon no estate, but that the same estate beginneth at the same tyme \bar{y} the remaynder dothe, and in this case the estate began befoze and the confirmacion enlarged not his estate nor gaue him no newe estate, but if a lease be made to a man for terme of an other mans lyfe, and after the lessoure onelye of his meere mocion confirmeth the lande to his lessee for terme of his owne life, the remayndre ouer in fee, this is a good remaindre in the law & conscience, and so me thinketh \bar{y} intente of the party shal not be regarded in this case. **D.**

And in the first case that thou hast put, me thinketh though it passe not by waye of graunte of that yet it shall passe as by \bar{y} way of remainder of \bar{y} reuercion, for euery dede shalbe taken most stronge against \bar{y} grauntour, & \bar{y} taking of the dede in this case is an attoznement in it selfe.

S.

*File 129 a. 105.
1 Com. 25 b. art.*

S. That can not be, for hee in the remainder is not party to y^e dede and therefore it can not bee taken by y^e way of graunt of y^e reuercion, for no graunt can be made but to him y^e is pty to y^e dede excepte it be by way of remaindre, & therefore if a man make a lease for terme of life, and after y^e lessour graunt to a straunger that the tenaunte for terme of life shal haue the lande to him and to his heires, that graunt is voide if it be made onely of his meere mocion without recompēce.

And in likewise if a man make a lease for terme of life, and after graunte the reuercion to one for terme of life, the remainder ouer in fee, & y^e tenant attourneth to him that hath the estate for terme of life onely entēding y^e he only shoud haue aduantage of y^e graunt, his entent is void and both shal take aduantage therof, & the attournement shal be taken good, accoꝝdinge to y^e graunt, and so in this case thonghe the feoffour entended y^e if the rente were not paide: that the straunger shoulde enter, yet beecaue the lawe geueth him no entree in y^e case that intent is void and the same straunger shal neither enter into y^e lande by law nor conscience. **D.** What shal than be done with that lande as thou thinkest after the condicion broken. **S.** I thinke that the feoffour in this case may lawfully reenter, for whan the feoffement was made vpon condicion y^e the feoffe would pay a rent to a straunger, in those woꝝdes is concluded in y^e law y^e if y^e rente were not paide to the straunger y^e the feoffoure shoud reeter for those woꝝds vpon condicion, imply so much in y^e law though it be not expꝛessed

And

43. Eliz. Coke.
2. rep. 67. 6.
To let the case.

The xxi. chapter.

And than whā the feoffour went further & said
þ if the rente were not paid that the straunger
should enter, those wordes were boide in þ law
and so the effect of the dede stode vpon the first
wordes wherby the feoffour may reēter in law
& conscience but if the first wordes had not bē cō
dicionall I would haue holdē it þ greater doubt
D. I pray thee put the case thereof in certeyne
with such wordes as be not cōdicionell þ I may
the better perceiue what thou meanest therein.

The xix. question of the Student

The xxi. chapter.

A Man maketh a feffement by dede indented,
& by the same dede it is agreed that the feoffe
shal pay to A. B. & to his heires a certeine rēt
yere!y at certein daies, & that if he pay not þ rēt
then it is agreed þ A. B. or his heires shal enter
into the land, & after the feoffe paieth not þ rent
than the question is who ought in conscience to
haue this lande and rente. D. Or we argue
what conscience will, let vs knowe firste what
the lawe wil therein. S. I thinke that by
the lawe neither the feoffour ne yet the saide A.
B. shal neuer enter into the land in this case for
not paymēt of þ rēt, for ther is no reētre in this
case geuē to þ feoffoure for not paiment of þ rēt
as there is in the case next before, and þ entre þ
is geuen to þ said A. B. for not paiment thereof
is boide in the lawe because he is estrange to
the

the dede as it appeareth also in the next chapter befoze. And therefore me thinketh that the greatest doubt in this case is to see to what vse this feoffement shalbe taken.

D. There appeareth in this case as thou hast put it, no consideracion ne recompence geuen to the feoffour, wherupon any vse may be deriued and if the case be so in dede and that the feoffour declared neuer his minde therein, to what vse shal it than be taken.

S. I think it shalbe taken to be to the vse of the feoffee as long as he paith y^e rente, for there is no reason why y^e feoffee should be builed wth payment of the rent hauing nothing for hys labour ne it may not conueniently be taken y^e the intent of the feoffour was so, excepte he expessed it, and than it must be taken he that enteded to recompence the feoffe for the busines that he shoulde haue in the paymente ouer, and by the woordes folowing his intent appeareth to bee so as me thinketh, for if the rente were not payde he would that A. B. should enter, & so it semeth hee entended not to haue any vse himselfe, and thus as me semeth this case should vary fro the common case of vles, y^e is to say, if a man seised of land make a feoffemēt therof: & it appeareth not to what vse the feoffement was made ne it is not vpon any bargaine oz other recompence, thē it shalbe takē to bee to y^e vse of the feoffoure except y^e contrary cā be proued by some bargaine oz otherlike, oz y^e his entent at the time of y^e livery of seison was expessed that it should bee to the vse of the feoffe oz of some other, and thā it shall

The xxi. chapter.

shal go according to his entent, but in this case me thinketh it shalbe taken that his entent was y it should first bee to the vse of the feoffee for the cause befoze rehearsed excepte the contrarpe can be proued, and so y knowledge of y entente of the feoffour is y greatest certieintie for knowledge of the vse in this case as me seemeth, but whan the feoffour goeth further and saith that if the rente bee not paide: then the saide A. B. should enter into the lande. than it appeareth y his entent was that the rent shoulde cease, and y A. B. should enter into the land, and though he may not by those woordes enter into the lande after the rules of the laswe, and to haue freehold yet those woordes seeme to be sufficient to proue that the entent of the feoffour was y he should haue the vse of the lande, for sith he had the rent to his owne vse, and not to the vse of the feoffour, so it seemeth he shall haue the vse of y lād that is assigned to hym for that payment of the rente. D. But I am some what in doubt whether he had that rente to his owne vse, for the entent of the feoffour might be that hec shoulde pay the rent for him to some other oz some other vse might be appointed thereof by the feoffour. S. If such an entent can be proued: thā y intēt must be obserued, but we be in the case to wete to what vse it shal be taken if the entent of the feoffour can not be proued, & than me thinketh it can not be otherwise takē, but that it shalbe to the vse of him to whom it shoulde be paide, for though it be called a rent, yet it is no rente in the lasw, ne in the laswe hec shall neuer haue re-

medy for it, though it were assigned to him and to his heires without condicion neither by distresse, by assise, by writ of annuity, nor otherwise but he shalbe driven to sue in the chauncery for his remedy, & then when he sueth in þ. chauncery he must surmit þ. he oughte to haue it by conspience, and that he can haue no remedye for it in the lawe. And than sith he hath no remedye to come to it but by the way of consciēce, it seemeth it shalbe taken that whā he hath recouered it that he ought to haue in conscience and þ. to his own vse without the contrary can bee proued, and if the contrary can be proued: and that the entent of the feoffour was that he should dispose it for him as he should appoint than hath he the rent in vse to another vse, and so one vse shoulde bee depending vpon another vse, which is seldome sene and shal not bee intended til it be proued. & so sith no such matter is here expressed. me thinketh the rent shalbe takē to be to the vse of him that it is paid to, and the lande in likewise that it is appointed to him for not payment of þ. said rente shalbee also to his vse, how thinkest thou will serue conscience therein.

D. I thinke that as thou takest the law now that conscience (in this case) and the lawe bee al one, for the law searcheth the same thinge in this case to know the case that conscience doth, that is to saye, the entente of the feoffoure and therefore I woulde moue thee further in one thinge.

S. What is that. D. That sith the entent of the feoffour, shalbe so muche regarded in this case: why it oughte not also

The xxii. chapter.

to be as much regarded in the case that is in **¶** last Chapter next befor this, where the wordes be condicional, and geue the feoffour a title reentre, for mee thinkethe that though the feoffour may in **¶** case reenter for the condicion broken that yet after his reentre he shalbe seised of the land after his entre to the vse of hym to whom the land was assigned by the sayd indenture for lacke of payment of the rent because **¶** intent of the feoffour shal bee taken to be so in that case aswel as in this. And **I** pray thee let me knowe thy minde what diuersitie thou puttest beetweene them. **S** Thou driueste mee now to a narrow diuersitie, but yet **I** wil answer thee therein as wel as **I** can, **D**. But firsteoz thou shew me that diuersitie: **I** praye thee shew me how vles began, & why so muche land hath bene put in vse in this realme as hath bene. **S**. **I** wil with good wil say as me thinketh therein.

How vles of lande first began and by what law and the cause why so muche lande is put in vse
The xxij. Chapter.

Vses were reserved by a secondary conclusion of the law of reason in this maner, when the general custome of property, wherby every man knew his owne good fro his neighbours was brought in among the people. It folowed of reason **¶** suche landes and goodes as a man had, ought not to be taken fro hym but by hys assent

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assent or by order of a law, and the sith it is so & every man & hath lands hath therby two thinges in him, & is to say, the possession of the land which after & law of Englad is called & franktenement or & freehold, & the other is auctoritie to take therby the profits of the land, wherfore it foloweth & he & hath land and intendeth to geue onely & possession and freeholde thereof to another, and to keepe the profits to himselfe ought in reason and conscience to haue the profits seeing there is no law made to prohibyte, but & in conscience suche reseruacion maye bee made. And when a man maketh a feoffement to another and intendeth & hee himselfe shall take the profits, then & lessee is said leased to his vse & so enfeoffed him, & is to say, to & vse & hee shall haue the possession and freehold thereof as in the law to & intent & the feoffour shall take & profits, and vnder this maner as I suppose, vnto les of land first began. D. It seemeth & the reseruing of such vse is prohibite by the lawe, for if a man make a feoffement and reserue the profits or any partes of the profits as & grasse wood or such other, that reseruacion is void in the law, and me thinketh it is al one to say that the law iudgeth suche a thing if it be done to be void, & that & lawe prohibiteth that the thing shall not bee done. S. Trough it is & such reseruacion is void in the law as thou sayst and & is by reason of a maxime in the law that willett & such reseruacion of part of & same thyng shall be iudged void in the law, but yet the law doth not prohibit & no such reseruacion shall be made

Ad. i.

but

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but if it be made. it iudgeth of what effect it shal be that is to say, that it shalbee voide, and so hee \bar{y} maketh suche reseruacion offendethe noe lawe therby, ne breaketh no lawe thereby, and therefore \bar{y} reseruacion in conscience is good, but if it were prohibite by statut \bar{y} no man should make such reseruacion ne that no feoffement of truste should be made but \bar{y} al feoffements should bee to \bar{y} vse of him to whō possession of the lande is geuen, then the reseruacion of suche vles against the statut should be void because it were agāst the lawe and yet such a statut shoulde not bee a statut agāst reasō because such vles were first grounded and reserued by the lawe of reason, but it should preuēt \bar{y} lawe of reason & shoulde put away \bar{y} cōsideracion wherupō \bar{y} law of reason was grounded before the statut made. And then to \bar{y} either questiō. \bar{y} is to say, why so muche land hath been put in vse, it will bee somewhat long & peraduenture to some tedious to shewe al \bar{y} causes particularly, but \bar{y} very cause why \bar{y} vse remained to \bar{y} feoffe notwithstanding hys owne feffement oz fine and sometyme notwithstanding a recovery agāst hym is al vpon one cōsideracion after the cause & entent of the gift, fine oz recovery, as aforesayde. **D.** Though reason may serue \bar{y} vpon a feffement a vse may be reserued to \bar{y} feoffour by \bar{y} intent of the feoffour agāst \bar{y} fourme of his gift as thou haste sayde before, yet I maruaile howe suche an vse maye bee reserued agāste a fine \bar{y} is one of \bar{y} highest records that is in the lawe, and is taken in the lawe of so hyghe effecte that it shoulde make an
ende

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ende of all strifes, or against a reconerpe that is ordeined in the lawe for them & bee wzonged to recouer their righte by, and mee thinketh that great inconuenience and hurt may folow when such recozdes may so lightlye bee auoyded by a secret intente or vse of the parties & by a nude and bare auerment and matter in dede, & specially sith such a matter in dede may be alledged that is not true wherby may rise great strief betwene the parties, and great confusion and vn- certain in the law, but neuerthelesse sith our intēt is not at this time to treat of & matt I pray thee touch shortly sōe of & causes why ther hath bin so many psons put in estate of lands to the vse of other as ther hath ben, for as I here say few men be sole sealed of their owne land. **S.** Ther hath ben many causes therof, of & which some be put asway by diuers statutes, & some remain yet, wherfoze thou shalt vnderstād & som haue put their land in feoffement secretly to the intent & they & haue righte to the lande shoulde not know agaynst whom to bring their accyon & & is some what remedied by diuers statutes that gene acciōs against parnours & takers of the profits. And sometime suche feoffementes of trust haue ben made to haue maintenance & be ring of their feoffes, which paraduēture were great lordes or rulers in the countrey, and therfoze to put away suche mayntenaunce : treble damages bee geuen by statute agaynste them that make suche feoffementes for maintenance. And sometyme theye were made to the vse of **Mortmaine** whiche might then be made with-

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out forsaithure though it were prohibite that the
frehold might not be geue in mortmain. But þ
is put away by the statut of Richard the second
And sometime they were made to defraude the
lordes of wardes, repleves, harriots, and of the
landes of theire villeines, but those pointes bee
put awaye by diuers statutes made in the time
of king Henry 5. vij. Sometime they were made
to auoide executions vpon statute Staple, sta-
tute Marchant & Recognisaunce, and remedye
is puided for that, þ a mā shal haue execuciō of
al such landes as anye parson is seised of to the
vse of him þ is so bounde at the tyme of execu-
tion sued in the .xix. yere of H. 5. vij. And yet re-
main feoffments fines, and recoveries in vse for
many other causes, in maner as many as there
did befoze þ saide estatute. And one cause why
they be yet thus vled is to put away tenancy by
þ curtesy & titles of dower. Another cause is for
þ landes in vse shal not be put in executyon vp-
on a statut Staple, statut marchant, nor recog-
nisaunce, but suche as be in the handes of the re-
cognisor at the time of the execucion sued. And
sometime lāds be put in vse þ they shoulde not
be put in execuciō vpo a writ of *Extendi facias*
ad valenciā. And sometime such vles be made þ
he to whose vse &c. may declare his wil thereon
& sōtime for suerty of diuers couenāts i indētu-
res of mariage & other bargaines, & these .ij. last
articles be the chiefe & principal causes why so
much lād is put in vse. Also lāds in vse be no as-
ses neyther in a *Formedon* nor in an accion of
Debt against the heire: ne they shal not bee put

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In execution by an Elegit sued vpon a recouers
as some mē say, & these be y^e very chief causes as
I now remember why so much land stādeth in
vse as there doth, and al the saide vles be refer-
ued by the intent of the parties vnderstād o^r a-
greed betwene thē, and y^e many tymes directly
against the wordes of feoffement fine, o^r reco-
uere, and y^e is done by the lawe of reason as is
aforesayde. D. May not an vse be assigned to
a straunger as wel as to be reserued to the feof-
four if the feoffour so appointed it vpon his fe-
offement. S. Yes as well, and in lyke wyse
to the feoffe & that vpon a free gyft wout anye
bargain o^r recompence if the feoffour so wyl. D.
what if no feffemēt be made but y^e a man graūt
to his feffe y^e fro thence forth he shal stand sei-
sed to his owne vse, is not y^e vse chāged though
there bee noe recompence. S. I thynke yes
for there was an vse in Esse before the gyfte
whiche he may as lawfully geue awaye as hee
might the land if he had it in possession. D. And
what if a man being seised of land in fee graūte
to another of his mere mocio without bargain
o^r recompence y^e he fro thenceforth shalbe seised
to the vse of the other, is not y^e graunt good?
S. I suppose y^e it is not good, for as I take
the law: a man cannot commence an vse but by
livery of seison o^r vpon a bargaine o^r som other
recompence. D. I hold mee contented wth
y^e thou hast sayde in this Chap. for thys time &
I pray thee shew me what diuer sitie y^e putttest
betwene those two cases that thou haste before
rehearsed in the.xx.Chapiter and in the. xxi.

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Chapter of this present booke. S. I wyll & good wyll.

The diuersitie betwene two cases here after folow, wherof one is put in y.xx.chapter, and the other in the.xxi Chapter of this present booke.

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The firste case of the sayde two cases is this.
A man maketh a feoffement by dedde indeted vpon a condicion that the feoffee shal pay certain rēt yerely to a straūger &c. & if he pay it not: & it shal be lawful to y straūger to enter into y lād. In this case I said befoze in y.xx. Chapter y the straunger might not ēter because y he was not priny vnto y condicion. But I said that in that case y feoffour might lawfully reētre by y fyrst wordes of the endēture because they imply a condiciō in the law & that the other wordes (y is to say) y the straūger should enter be void in lawe & conscience. And therfoze I saide farther that when the feoffour had reentred that he was seased of the lande to his owne vse & not to y vse of the straunger, thonghe his entent at the making of the feoffement were that the straunger after his ētre should haue had y lād to his own vse if he might haue entred by the law. And the cause why I thinke that y feoffour was seased in that case to his owne vse I shall shewe thee afterward: The secōd case is this, a mā maketh a feof=

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a feffement in fee, and it is agreed vpon y^e feffement
 y^e the feoffe shal pay a yerely rent to a straūger,
 & if he pay it not, y^e then the straunger shall eⁿtre
 into the land. In this case I said as it appereth
 in the said.xxi.Chapt, that if the feoffee paid not
 the rēt: y^e the straūger shoulde haue y^e vse of the
 lande though he maye not by the rules of the
 lawe enter into the lande, and the diuersitie be-
 twene y^e cases me thinketh to be this. In y^e first
 case it appeareth as I haue said before in y^e said
 xx.chapiter, y^e the feoffour might lawfully reent^r
 by the law for not paymt of rent, and then whē
 he entred according: hee by y^e entre auoided the
 first livery of seyson in so much y^e after y^e reentre
 he was sealed of the land of lyke estate as hee
 was before the feoffement. And so remaineth
 nothing, wherupon the straunger might grouⁿd
 his vse, but onely the bare graunt oz entente of
 the feoffour when he gaus the lād to the feoffee
 vpon condicion that he should pay the rēt to the
 straunger, and if not, that it should be lawful to
 the straunger to enter for y^e feoffement is auoi-
 ded by the reent of the feoffour as I haue saide
 before, and as I sayde in the laste Chapter,
 as I suppose a nude oz bare graunte of hym y^e
 is sealed of land is not sufficient to begynne an
 vse vpon D. A bare graunte may chaunge an
 vse as thou thy selfe agreedst in the last Chapt-
 ter, why then maye not an vse as well be-
 gynne vpon a bare graunte. S. When an
 vse is iⁿ esse he that hath y^e vse may of his mere
 motion geue it away if he will without recom-
 pence as he might y^e lād if he had it in possessyon
 N.iiij. but

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but I take it for a ground that he cannot so begin
an vñe about a liuery of seylon or vpon a recom-
pence or bargain, & that ther is such a ground in
þe law that it may not so begin it appeareth thus
it hath bē alway holdē for law þe if a man make
a dede of feoffment to another and deliuer the
dede to him as his dede, & i that case he to whō
the dede is deliuered hath no title ne medling w
the land afoze liuery of seylon bee made to hym
but onely that he may enter and occupy the lād
at the wil of the feoffour, and there is no booke
sayth that the feoffour in that case is seyled ther
of befoze liuery to the vñe of the feoffee. And in
likewise if a manne make a dede of feoffmēt of
two acres of lande that lie in two shires inten-
ding to geue them to the feoffce & maketh liue-
ry of seilō in the one shire & not in the other, in
this case it is cōmonly holdē in bookes that the
dede is void to þe acre wher no liuery is made, ex-
cept it lie w in the vñe saue only þe he may eter
& occupy at wil as is afozelayde, & there is no
booke that saith that the feoffee shoulde haue þe
vñe of the other acre, for if an vñe passed thereby
then were not the dede void to al intētes & yet
it appeareth by the woordes of the dede þe þe fe-
offour gaue þe lāds to the feoffee, but for lack of
liuery of seylon the gift was void & so me thin-
keth it is here about liuery of seylon be made ac-
cordīg. But in þe second case of the sayd .ii. cases
the feoffee may not reēter for non paiment of þe
rent & so the first liuery of seylon continueth &
standeth in effect, and therupō the first vñe may
well beginne and take effect in the straunger:

of

Ent. p. v.

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of the land when the rent is not payd vnto hym
accoꝝding to the first agrement. And so me thi=
keth ꝑ in the first case the vse is determined be=
cause ꝑ liuery of seisoꝝ whereupō it commenced
is determined, and ꝑ in the secōd case the vse of
the land taketh effect in ꝑ straunger, for not pai=
ment of the rent by the graunt made at the first
liuery which yet continueth in his effecte, and
this me thinketh is ꝑ diuersity betwene ꝑ cases
D. Yet notwithstanding the reason that thou
hast made, me thinketh that if a man seysed of
landes maketh a gift thereof by a nude promyse
without any liuery of seisoꝝ oꝝ recōpence to him
made: and graūt that he shalbe seised to his vse
ꝑ though the promise be void in the law, ꝑ yet
neuerthelesse it must holde and stande good in
consciēce & by the law of reason, for one rule of
the law of reason is, that we maye do nothyng
against the trouthe, and sith the trouthe is that the
owner of the ground hath graunted ꝑ hee shall
bee seysed to the vse of the other: ꝑ graūt muste
nedes stande in effecte oꝝ els there is no trouthe
in the grauntour. S. It is not agaynst the
trouthe of the grauntour in this case though by
ꝑ graūt hee bee not seised to the vse of the other
but it proueth that hee hath graunted, that the
lawe will not warrant him to graunt, wherfoze
his graunt is boide. But if the grauntoure had
gone farther and sayd that he would also suffer
the other to take the profits of the lands wpyth
out let oꝝ other interruption, oꝝ that he would
make hī estate in ꝑ lād whē he should be requi=
red, then I think in those cases he were bound
in

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In conscience by that rule of y law of reason that thou hast remembred to parfourme the, if he intended to be bounden by his promise for els he shoulde go against his own trowth & againste his owne promise. But yet it shall make no vse in y case, nor he to whō the promise is made shal haue no accion in the law vpon that promise although it be not parfourned, for it is called in the lawe a nude or a naked promise. And thus me thynketh y in the first case of the said two cases y graūte is now auoided in y law by the reentre of y seffour & y the seffour is not boundē by his graūt neither in law nor conscience, but in the seconde case he is bound so y the vse passeth frō him as I haue saide before. D. I holde me contente with my conceipt for this time, but I pray thee shew me somewhat moze at large what is taken for a nude cōtract or a naked promise in y laws of England & where an accion may lye therupō & where not. S. I wil w good wil say as meo thynketh therein.

What is a nude contract or naked promise after the lawes of England, and whether any accion may lye thereuppon.

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First it is to be vnderstand that contracts be grounded vpon a custome of y realme and by the law that is called (*Ius gentium*) & not directly by the law of reason, for when al thinges were

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were in commō: it neded not to haue cōtracts,
but all pꝛopꝛty was bzought ī, they were right
expedient to al people. so ꝑ a man mighte haue
of his neighbour ꝑ he hadde not of his owne, &
that coulde not bee lawfully but by hys gift, by
sway of lending, concorde, oz by some lease, bar-
gaine oz sale, and such bargaines and sales bee
called contracts and be made by assent of ꝑ par-
ties vpon agreement betwene them of goods oz
lāds for money oz for other recōpēce, but of mo-
ney, vsuel, for money vsuel is no contract. Also
a concorde is properly vpon an agreement bee-
twene ꝑ parties & diuers articles there, sōe ri-
sing on ꝑ one part & sōe on the other as if I hō
at Stile letteth a chāber to Hēry Hart & it is
farther agreed betwen thē ꝑ ꝑ said Hēry Hart
shal go to bord & the said Iohn at Stile & the
said Hēry Hart to pay for ꝑ chamber & bordig
a certaine sūme & c this is pꝛpꝛly called a cōcord
but it is also a cōtract & a good acciō lieth vpon
it, howbeit it is not much argued in ꝑ lawes of
Englānd what diuersitie is betwene a contract
& concord, a promise, a gift, a lone, oz a pledge,
a bargain, a covenant, oz such other, for ꝑ intēt
of the law is to haue ꝑ effect of the mattꝛ argu-
ed and not the termes, and a nude contracte is
where a man makethe a bargaine, oz a sale of
hys goods oz landes without anye recompence
appointed for it. As if I saye to another I sell
thee all my lande oz all my goods and nothings
is assigned that the other shal geue oz paye for
it that is a nude contracte, and as I take it: it
is boide in the lawe and conscience, and a nude

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Of naked promise is wher a mā promiseth another to geue hi certain money such a day or to buyld him an house, or to do him such certain seruice, & nothing is assigned for the money. for the buylding, nor for the seruice, these bee called naked promises, because ther is nothing assigned why they shoulde bee made, & I think no acciō lieth in those cases though they bee not perfourmed Also if I promise to another to keepe him such certain goods safely to such a time, & after I refuse to take them, there lieth no accyon agaynste me for it, but if I take thē & after they be lost or epaired through my negligēt keepinge, there an accion lieth. D. But what opinion holde they that be learned in the lawe of England in suche promises & bee called naked or nude promises whether do they hold & they that make the promise be bound in conscience to parfourme their promise though they cannot be cōpelled therto by the law or not. S. The bookes of the lawe of Englande treat litle thereof, for it is lefte to the determinaciō of Doctours, and therfore I pray thee shew me somwhat now of thy mind therē & then I shal shew thee therein somwhat of the mindes of diuers that be learned in the lawe of this realme. D. To declare that matter playnely after the saying of Doctours: it woulde aske a long time & therefore I wil touche it briezely to geuey occasiō to desire to here moze therein here after. First thou shalt vnderstande & there is a promise & is called an aduow. and & is a promise made to god and hee that doth make suche a vow vppon a deliberate minde entendinge to par=

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parfourme it is bounde in conscience to doe it though it be only made in the heart wthout p^{ro}u^{nc}ing of wo^rdes, and of other p^{ro}mises made to man vpon a certain consideration, if the p^{ro}mise be not against γ law. As if A p^{ro}mise to giue B xx. p^{ou}nd because he hath made him such a house or hath lent him such a thing or such otherlike. I thinke him bound to keepe his p^{ro}mise. But if his p^{ro}myse be so naked γ there is no maner of consideration why it shoulde bee made then I thinke him not bound to parfourme it for it is to suppose γ ther was some error in the makinge of the p^{ro}mise, but if such a p^{ro}mise bee made to an vniuersitie, to a citie, to the church, to the clergy, or to pooze men of such a place, & to the honour of god or such other cause like, as for maintenance of learning, of γ cōmon welth, of the seruice of God, or in reliefe of pouerty or such other then I thinke γ he is bounden in conscience to parfourme it though there be no consideration of wo^rldly p^{ro}fit γ the grauntour hathe had or intendeth to haue for it, and in al such p^{ro}mysses it must be vnderstande γ hee that made the p^{ro}mise intended to be bound by his p^{ro}mise, for els commonly after all Doctours he is not bound. vnlesse he were bound to it before hys p^{ro}mise. As if a man p^{ro}mise to geue his father a gown that hath neede of it, to keepe him fro cold, & yet thynkethe not to geue it hym, neuerthelesse he is bounde to geue it for hee was bounde therto before. And after some Doctours a man may be excused of suche a p^{ro}mise in conscience by casuallie γ cometh after the p^{ro}mise if it be

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so that if he had knowen of y^e casualty at y^e making of the promise he would not haue made it And also suche promises if they shal binde they must bee honest, lawfull, and possible, and eis they are not to be holden in conscience though there be a cause &c. And if the promise bee good and with a cause though no worldlye profite shal grow therby to him y^e maketh the promise but onely a spiritual profite as in the case before rehearsed of a promise made to an vniuersity, to a City, to y^e church, or such other & with a cause as to y^e honour of god, other there is y^e most commonly holden y^e an accion vpon those promises lyethe in the lawe Canon. **S.** Whether dost thou mean in such promises made to an vniuersitie, to a Citie, or to such other as thou hast rehearsed before and with a cause as to the honour of god or such other that the party shal be bound by his promise if he intended not to be bounden therby y^e or naye. **D.** I think naye no more then vpon promises made vnto comon parsons. **S.** And then me thinketh clerely y^e no accion can lie against him vpon such promises, for it is secret in his owne conscience whether he intended for to be bound or naye. And of y^e entent inward in y^e heart: mans law cannot iudge, & y^e is one of y^e causes why y^e law of god is necessary (y^e is to say) to iudge inward things, & if an accion should lie in y^e case in the law Canon, the should y^e law Canon iudge vpon y^e inward itet of y^e hart, which cannot be as mee semeth. And therfore after diuers y^e bee learned in the lawes of the realme al promises shal bee taken in thys maner

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maner, that is to saye, If he to whom the promise is made: haue a charge by reason of the promise whych he hath also perfourmed: the in þ case he shal haue an accion for that thinge that was promised though he that made þ promise haue no worldlye profit by it . As if a manne say to another heale suche a poore manne of his disease, or make an hyghe way and I shal geue thee thus muche, and if hee do it , I thinke an accion lyeth at the common law. And mozeouer though the thing that he shal do bee al spirituall, yet if he parfourme it I thinke an accion lieth at the common law. As if a man say to another, fast for me al the next Lent & I shal geue thee .xx. pound and he parfourmeth it, I thinke an accion lyeth at the common law. And in likewise if a man say to another, marie my daughter and I wil geue thee .xx. pounde. Upon this promise an accion lieth if hee marie his daughter and in this case he cannot discharge the promise though he thought not to be bounde thereby, for it is a good contract, and he may haue *Quid pro quo*, that is to say the preferment of his daughter for his money. But in those promises made to an Vniuersitie or suche other as thou haste remembred befoze, with suche causes as thou hast shewed, that is to say, to the honour of God or to the encrease of learninge, or suche other lyke where the partye to whom the promise was made is bounde to no new charge by reason of the promise made to hym but as hee was bounde to befoze, there they thinke þ no accyon lyeth agaynste hym though hee parfourme not
 bys

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his promise, for it is no contracte, and so his owne conscience must bee his iudge whether he intended to be bound by this promise or not. And if hee intended it not: then hee offended for his dissimulation onelye but yf hee intended to bee bound, then if hee perfourme it not: vntrouthe is in him, and hee proueth himselfe to be a liar, which is prohibited as wel by y law of God as by y law of reason, and farthermore many y be learned in the lawe of Englande holde y a man is as muche bounden in conscience by a promise made to a common parson if he intended to bee bounde by his promise as he is in the other cases y thou hast remembred of a promise made to the church, or to y clergy or such other, for they say y as much vntrouthe is in y breaking of the one as of the other, & they say y the vntrouthe is more to be pondred the y parson to whō the promises be made. D. But what hold they if y promise be made for a thing past, as I promise thee .xl. pound for y thou hast buylded me suche a house, lyeth an acciō ther. S. They suppose nay, but he shall be bound in conscience to perfourme it after his intent as is befoze said. D. And if a mā promise to geue another .xl. pound in recompence for such a trespassse y he hath done hī, lieth an acciō there? S. I suppose nay, & the cause is for y such promises be not perfect contracts for a contract is properly wher a mā for his money shal haue by assēt of the other party certaine goods or some other profit at y time of y contract or after but if y thing be promised for a cause y is past by way of a recompence then it is rather an accorde then a contracte

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contract, but then the law is & bypon suche accorde the thinge that is promised in recompence must be payde or deliuered in hand, for bypon an accorde there lieth no accion. D.

But in the case of trespass whether holde they & hee be bound by his promise though hee intended not to be bounde thereby. S. They thynke nay no moze then in the other cases & be put before. D. In the other cases he was not bound to & he promised but onely by his promise, but in this case of trespass he was bound in conscience before the promise to make recompence for the trespass, and therefore it semeth & he is bound in conscience to kepe his promise though he intended not to be bounden thereby.

S. Though he were bounde before the promise to make recompence for his trespass, yet he was not bounden to no summe in certaine but by his promise, and because & the summe maye be to muche or to little and not egall to & trespass, and that the party to whō the trespass was done notwithstanding & promise is at libertye to take his accion of trespass if he wil, therefore they hold & he may be his own iudge in conscience whether he intended to be bound by his promise or not, as he may in other cases, but if it were of a debt, then they hold & he is bounden to perfourme his promise in conscience. D.

What if in the case of trespass he affirmeth his promise with an othe. S. Then they hold & he is bound to perfourme it for sauing of his othe though he intended not to be bounden, but if he intended to be bound by his promise, then they

D. j.

say

The xxiiii. chapter.

say that an othe needeth not but to enforce the promise, for they say he breaketh the law of reason which is & we may do nothing against the truth as wel when he breaketh his promise & he thought in his owne hart to be bounde by, as he doth when he breaketh his othe, though the offence be not so greate by reason of the perjury, more over to that thou saiest that vppon suche promises as thou haste rehearsed before shal lye an accion after the law Canon, verely as to that in this realme there can no accion lye thereon in the spiritual courte if the promise bee of a tempozal thing, for a prohibition or a premunire facias shoulde lye in that case. D.

That is maruaille lithe there can no accion lye thereon in the kings courte as thou sayest thy selfe. S. That maketh no matter. for though there lye no accion in the kings court againsts executors vpon a simple contracte, yet if they be sued in that case for the debt in the spiritual court a prohibition liethe. And in likewise if a mā swage his law vntreuly in an accion of debt vpon a contract in the kings court, yet he shall not be sued for the perjury in the spiritual court and yet no remedy lyeth for the perjury in the kings court, for the prohibition lyeth not onely where a man is sued in the spiritual courte of such thinges as the party may haue his remedy in the kings court: but also where the spiritual court holdeth plee in such case where they by the kings prerogative and by the auncient custome of the realme ought none to holde. D.

I will take aduilement vppon that thou haste
sayd

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said in this matter til another time and I pray
the now proceede to another question.

The xx. question of the Student.

The xxv. Chapter.

A Man hath two sonnes, one borne before
poufels and the other after aspoufels, and
the father by his will bequetheth to his sone &
heire all his goods, which of these two sonnes
shal haue y goodes in conscience. D. As I laide
in our first dialogue in latin the last chapter, the
doubt of this case dependeth not in y knowinge
what conscience wil in y case, but rather in know-
ing which of the sonnes shall bee iudged heyre,
(y is to say) whether he shal be taken for heire
that is heire by the spirituall lawe, or he that is
heire by the lawe of the realme, or els that it
shal be iudged for him that the father tooke for
heire. S. As to that point admit the fathers
minde not to be knowen, or els that his minde
was that hee shoulde bee taken for heire that
should be iudged for heire by that lawe, that in
this case it ought to bee iudged by. And tha I
pray thee shew me thy minde therin, for though
the question be not directly depending vpon the
point to see what conscience wil in this case, yet
it is right expediēt for the wel ordering of consci-
ence y it be knowē after what law it shalbe iud-
ged, for if it ought to bee iudged after the tēpo-
ral lawe who should be heire, tha it were against
conscience, if y iudges in the spiritual law shoulde
D. ij. iudge

The xxv. chapter.

iudge him for heire & is heire by & spiritual law
& I think they should be bound to restitution ther
by, & therefore I pray the shew me thine opiniō
after what law it shalbe iudged. D. Whes
thinketh that in this case it shalbe iudged after
the law of the Church, for it appeareth & the
bequest is of goodes, and therefore if anye suite
shalbe taken vpon the execucion of the will for
& bequest, it must be taken in the spiritual court
and when it is depending in the spiritual courts
mes thinketh it must be iudged after the spiritu
al lawe, for of the tempozall lawe they haue
no knowledge nor they are not bound to know
it as me thinketh & more stronger not to iudge
after it. But if the bequest had bene of a chattel
real as of a lease for terme of yerres or of a ward
or such othez then the matter should haue come
in debate in the kinges court, and then I think
the iudges there should iudge after the lawe of
the realme and & is, & the yōger bzeher is heire
and so me thinketh the diuersitie of the courts
shal make the diuersity of the iudgement. S.
Of that might folow a greate inconuenience as
me semeth, for it might be that suche case bothe
chatels real, and chatels personel were in the
will, and than after thine opinion the one sōne
should haue the chatels parsonel, and the other
sonne the chatels real, and it can not bee con
ueniently taken as me thinketh but that the fa
thers wil was & the one sonne shoulde haue all
& not to be deuided. Therefore me thinketh that
he shall be iudged for heire that is heire by the
cōmon law. And & the iudges spiritual in thys
case

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case bee bound to take notice what the common law is, for lithe the thinges that bee in variance be temporall, that is to saye, the goods of the father, it is reason that the right of them in this realme shalbee determined by the lawe of the realme. **D.** How may that bee, for the iudges spirituall knowe not the lawe of the realme, ne they can not knowe it as to the most part of it, for much parte of the lawe is in such speache & fewe men haue knowledg of it and there is no meanes ne familiaritie of study betwene them that learne the said lawes for they be learned in seuerall places & after diuers waies and after diuers maners of teachinges & in diuers speeches and commonlye the one of them haue none of the bookes of the other, & to binde the spirituall iudges to geue iudgement after & law that they know not, ne that they can not come to the knowledg of it semeth not reasonable. **S.** They muste doe theirre in as the kings iudges must doe when anye matter cometh befoze them that oughe to bee iudged after the spiritual law whereof I put diuers cases in our first dialogue in English the vij. chap that is to say, they must either take knowledg of it by their own study oz els they must equire of them that be learned in the law of the church what the lawe is and in likewise muste they doe But it is to doubt & some of them woulde bee lothe to aske any such question in such case oz to confesse that they are bound to geue their iudgement after the temporall lawe, and surely they may lightly offend their conscience. **D.**

I suppose that some be of opinion that they are not bound to know the law of the realme, and verely to my remembraunce I haue not harde that iudges of the spiritual law are bounde to knowe the lawe of the Realme.

S. And I suppose that they are not onely bounden to know the law of the realme, or to do that in them is to know it, whan the knowledge of it openeth the right of the matter that dependeth befoze them, but that they bee also bounden to know where and in what case they oughte to iudge after it, for in suche cases they must take the kings lawe as the law spiritual to that pointe, and are bounden in conscience to folow it as it maye appeare by dyuers cases wherof one is this. Two iointenantes bee of goodes, and the one of them by his laste will bequetheth al his part to a straunger and maketh the other iointenant his executour and dieth, if hee to whom the bequeste is made, sue the other iointenant, vpon the legacy as executour &c. vppon this matter shewed I iudges of the spiritual lawe are bounden to iudge the wil to be void, because it is void by the lawe of the realme, wherby the iointenant hath right to the whole goodes by I title of the surviour and is iudged to haue the goodes as by I firste giste which is befoze the title of the wil, & must therefore haue pferment as the elder title, and if the iudges of the spiritual court iudge otherwise, they are bound to restitution, & by like reason the executours of a man that is outlawed at the time of his death may discharge them selfe

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D

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geue by the statute of westminster the seconde
and y^e speaketh onely of dismes and not of pen-
sion. S. where a parson of a churche is wzō-
fully deforced of his dismes & is let by an In-
dicavit to aike his dismes in the spiritual court
than this patron may haue a writ of righte of
dismes by the statute that thou speakest of for
there lay none at the common law for the per-
son had their good right though he were let by
the Indicavit to sue for his right. But whā y^e
parson had no remedy at the spiritual law, ther
a writ of right of dismes lay for the patron by
the common law as wel of pencions as of dis-
mes, and some say y^e in suche case it laye of lesse
than of the fourth parte by the common lawe
but that I passe ouer. And the reason why
it lay at the common lawe if the disme oz pē-
sions were aboue y^e fourth parte &c. was this by
the spiritual lawe the alienacion of the person
with assent of the byshop and of the Chappter
shal barre the successour without assent of the
patrone, and so the patron might lese hys pa-
tronage and he not assenting thereto for his en-
cumbent might haue no remedy but in y^e spiri-
tual court, and there he was barred wherfoze
the patrone in that case shal haue his remedye
by the common lawe where the assente of the or-
dinary and Chapiter withoute the patrone shal
not serue as it is said befoze. But where y^e en-
cumbent had good righte by the spiritual lawe
ther lay no remedy for the patron by the cōmō
law though the encumbent were let by an In-
dicavit, & for y^e cause was y^e said statute made
and

and it lieth as wel by the equitie for offrynges
and pensions as for dismes. Than ferther I
shoulde thinke that where the spirituall court
maye holde plee of a tempozall thyng that they
must iudge after the tempozal laswe, and that ig
norance shal not excuse them in that case, for
by takinge of theyr office they haue bound them
selfe to haue knowledg of as muche as bee lon
geth to theyre office as all iudges bee spiritua ll
and tempozall. But if it were in argumente in
this case, whether the eldest sonne might bee a
prieste because he is a bastarde in the tempozal
law that shoulde bee iudged after the spirituall
law for the matter is spirituall. D.

yet notwithstandinge al the reasons that thou
hast made, I cannot see howe the Judges of
the spirituall lawe shal bee compelled to take
notice of the tempozal law seeing that the most
part of it is in y Frech tongu, for it were hard
that euery spirituall iudge should bee compel
led to learne y togue. But if y law of y realme
were set in such order that they that entende to
study the law Canon might first haue a sighte
of the law of the realme as they haue nowe of
the lawe Ciuil, and that some bookes and trea
tises were made of cases of conscience cōcerning
those two lawes as there be now concerninge
the law Ciuil & the law Canon, I would assēt
y it were right expedient, and thā reasō might
serue the better that they should be cōpelled to
take notice of the law of the realme as they be
now bounden in suche countries as the lawe
Ciuil is vled to take notice of that lawe. S.

De

The xxvi. chapter.

He thinketh thine opinion is righte good and reasonable but till suche an order be taken they are bound as I suppose to enquire of them & be learned in the common law what the lawe is, & so to geue their iudgement accozdinge, if they wil keepe them selfe fro offence of conscience, and for as muche as thou hast wel satisfied my mind in all these questions befoze: I pray the now that I may somewhat fele thy mind in diuers articles that be woziten in dyuers bookes for the ozdzing of conscience vpon the law Canon and Cpyll, for me thinketh that ther be diuers conclusions put in diuers bookes as in summes called Summa Angelica and Summa rosella, and diuers other for the good order of conscience that be against the law of this realme and rather blinde conscience than to geue anye light vnto it. D.

I pray the shew me some of those cases.

S. I will with good will.

Whether an Abbot may with conscience present to an aduowson of a Church that belongeth to & house without assent of the conent:

The xxvi. chapter.

It appeareth in the chapter. Et agnoscitur de his que sunt a prelatibus. the which chapter is recited in the summe called Summa Angelica in the title Abbas the xxviij. article that he may not without any custome or any specyall pryncedgedge

ledge do helpe therin. **S.** Trowth it is that there is such a decretale, but they that be learned in the law of England holde the decretale bindeth not in this realme, and this is the cause why they do holde that opinion. By the laws of the realme the whole disposicion of the landes and goodes of the abbey is the Abbotes onely for the time that he is abbote and not in the couent, for they bee but as dead personnes in the law, and therefore the abbot shall sue and bee sued only without the couent doe homage, fealtye, atturue make leases and present to aduow= sos only in his own name, & they say farther & this aucthoritie can not be taken from him, but by the law of the realme, and so they say that & makers of the decretale exceded their power. wherefore they say it is not to be holden in conscience, no more than if a decree were made & a lease for terme of yerres or at will made by the Abbot without the couent should be immediatly void, and so they thinke that the abbot maye in this case present in his owne name wythoute offence of conscience, because the saide decretale holdeth not in this realme. **D.** But manye be of oppinion & no man hath aucthoritye to p= sent in right and conscience to any benefice with cure, but the Pope, or that he hath his aucthoritie therein deriued fro & Pope, for they saye & for as much as the Pope is the vicar generall vnder god, and hath the charge of the soules of al people that be in & flocke of Christes church it is reason that sith he can not minister to al ne do that is necessarye to all the people for their soules

The xxvi, chapter.

soules health in his owne parson that he shall assigne deputies for his discharge in y^e behalfe. And because patrones clayme to presente to Churches in this realme by their owne righte without title deryued fro the Pope they saye that they vsurpe vpon the Popes aucthoritie and therefore they conclude that though the Abbot haue title by the laswe of the realme to present in this case in his owne name that yet because that title is againste the Popes prerogative that that title, ne yet the laswe of the realme that maintaineth that title holdethe not in conscience. And they saye also that it belongeth to the laswe canon to determine the righte presentment of benefices, for it is a thinge spirituall and belongeth to the spiritual iurisdiction as the deprivation fro a benefice doth and so they say the said decretall bindeth in conscience though in y^e laswe of the realme it bindeth not. **S.** As to the first consideracio I would right well agree that if the patrones of Churches in this realme claimed, to put encumbentes into such churches as should fall void of their patronage without presentinge them to the Bishop or if they claimed that the bishop should admyt such encumbent as they should present without any examinacion to bee made of hys ability in y^e behalfe, that y^e claime were against reason & conscience for the cause that thou haste rehearsed: but for as much as the patrones in this realme claime no more but to present their encumbents to the Bishop and then to the Bishop to examine the abilitie of the encumbēt and if he find
hym

hym by the examinaciō not able to haue cure of soule, hee then to refuse him & the patron to present another that shal be able, & if he be able than the bishop to admit him, institute him: & inducte him, I think & this claime & their presentmēt^s thereupon stande with good reason and conscience, and as to the seconde consideration it is holden in the lawes of the realme & the right of presentment to a Church is a tempozall enheritance & shal discend by course of enheritance fro heire to heire as landes and tenements shal and shalbe taken as an asses as landes and tenementes bee and for the tryall of the righte of patronages bee ordeined in the law dyuers accions for them & be wzonged in that behalfe as wzites of right of aduowson, assises of darreins presentment Quare impedit, and diuers other which alway without time of mind haue beene pleded in the kings courtes as thinges partepning to his crowne and roiall dignitie, and therfore they say in that this case his lawes oughte to be obeyed in law and conscience. D.

If it come in variaunce whether hee that is so presented be able or not able by whom shal & abilitie be tried? S. If the ordinarie bee not party to the accion it shalbe tried by & ordinarie, and if he be partye it shalbee tried by the metropolitane. D. Then the law is more reasonable in that point than I thought it had ben but in & other point I wil take aduise mēt in it til another time, & I pray thee shew mee thy minde in this point, if an Abbot name his couēt with hū in him presentacion doth that make & presēt^a

The xxvi. chapter.

presentacion boide in the law, or is the presentacion good that notwithstanding?

I think it is not boide therfore, but the naming of them is boide and a thing moze than needeth for if the abbot be disturbed he must bringe his accion in his owne name without the couent.

D. Then I perceiue wel that it is not prohibite in the lawe of England, but that the abbot may name the couent in his presentacion w^y the him, and also take their assente whom hee shall present if he will, and then I holde it the surest waye, that he so do, for in so doinge he shal not offend nother in law nor conscience. **S.**

To take the assent of the couent whom he shall present and to name them also in the presentacion knowinge that he maye doe otherwise bothe in law and conscience if he will, is no offence. But if he take their assente or name them w^y hym in the presentacion thinking that he is so bounde to do in law and conscience, settinge a conscience where none is, and regardeth not the lawe of the Realme that wil discharge his conscience in this behalfe if he wil so that hee present an able man as hee maye doe withoute their assente there is an error and offence of conscience in the abbot. And in likewise if the abbot present in his owne name, and therfore the couent saith that he offendeth conscience in that hee obserueth not the lawe of the church for that he taketh not their assent, than they offend in iudging him to offende, that offendeth not. And therfore the sure way is in this case to iudge both the said lawes of suche effecte as they bee
and

The xxvii. chapter. fo. iij

and not to set an offence of conscience by breaking of the said decree whiche standeth not in effect in this behalfe within this realme.

CIf a man finde beastes in his grounde doing hurt, whether may he by his owne aucthoritie take them and kepe them til he be satisfied for the hurte.

The xxviii. chapter.

This Question is made in the Summe called summa rosella in the title of restitution that is to saye restitutio xij. the ix. article, and there it is answered y he maye not take them for to holde them as a pledge till he bee satisfied for the hurt: but that he may take them & keepe them till he know who oweth the that he maye thereby learne against whom to haue his remedy. Is not the law of the realme so in likewise? **S.** No verely, for by the law of the Realme he that in that case hath the hurt may take the beastes as a distresse and put them in a pounce ouert so it bee within the same thize, and there let them remaine til the owner wil make hym amendes for the hurte. **D.** What callest thou a pounce ouerte. **S.** A pounce ouerte is not onelye suche pounces as be commonly made in towne and lordshippes for to put in beastes that be distraigned, but it is also euery place where they maye be in lawfullye not making the owner an offendour for theyre beinge there, and that it bee there also that the owner

The xxvii.chapter.

owner may lawfully geue the beastes meate & drinke while they be in pounce. **D.**

And if they die in pounce for lacke of meate whose iopardye is it? **S.** If it bee suche a pounce ouerte as I speake of, it is at the perill of hym þ̄ oweth the beastes, so that he that had the hurt shalbe at liberty to take his accion for the trespass if hee will, and if it be not a lawefull pounce then it is at the perill of him that distrayned, and so it is if he drine them out of the shyre and they die there.

D. I put case þ̄ he that oweth þ̄ beastes offer sufficient amendes, and the other wil not take it but kepeth the beastes still in pounce, may not the owner take them out? **S.**

No for he may not be his owne iudge. And if he doe, an accion lieth against him for breakinge of þ̄ pounce, but he must sue a repleuin to haue his beastes deliuered him out of þ̄ pounce and thereupon it shal bee tried by xij. men whether the amendes that was offered were sufficient or not. and if it be found þ̄ the offer was not sufficient: than hee þ̄ hathe the hurte shal haue suche amendes as the xij. men shal assesse. **D.** If it be found by þ̄ xij. men þ̄ the amendes were sufficient, shal he þ̄ refused to take it haue no punishmente for his refusell, and for keepinge of the beastes in pounce after þ̄ tyme. **S.** I think no, but þ̄ hee shall yelde damages in the repleuin, because the issue is tried against him. **D.**

I put case þ̄ the beastes after that refusel dye in pounce for lacke of meate at whose iopardye is it than. **S.** At the iopardye of him that owed

The.xxviiij. Chapter. fol.114.

owed the beasts as it was before for he is bound at his peril by reason of þe wrong that was done at the beginning to see þe they haue meat as long as they shalbe in pound, vntles þe kings wize com to deliuer them, & he resisteth it, for after þe time it will be at his jeopardy if they dye for lack of meat & the damages shalbe recovered in an action brought vpon the statut for disobeying the kings wize.

C Whether a gift made by one vnder the age of xxv. yeres be good

The.xxviij. Chapter.

I T appeareth in Summa angelica in the title donacio prima, the.vij. article þe a man before the age of xxv. yere maye not geue, without it be with the auctoritie of his tutor. Is it not so likewise at the common lawe? **S.** The age of infants to geue or sell their landes & goodes in the law of England at, is. xxi. yere or aboue so þe after that age the gifte is good, and before þe age it is not good, by whose assent soever it be except it be for his meat and his drinke or apparel, or þe he do it as executour in parfourmaunce of the will of his testatour or in some other lyke cases that needeth not to be reherled here, and that age must be obserued in this realme in law and conscience and not the saide age of fyue and twenty yere. **D.** I put case it were ordeined by a decree of the Church that if anye manne by his wyl bequetheth goods to another, and

P.i.

will

*Deum 3. b. et 4a
18. E. 4. 2. a.
21. H. 6. 31. b. part*

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Willeth that they shal be deliuered to him at his
ful age, and y in that case siue and twenty yeaere
shalbee taken for the full age, shall not y decree
be obserued & stand good after the lawe of Eng-
land: S. I suppose it shal not, for though it be-
long to the church to haue the probare and y ex-
ecutions of testaments made of goods and cat-
tels, except it be in certaine Lordshippes and
seignories y haue them by prescripcyon, yet the
church may not as it semeth determin what shal
be the lawful age for any pson to haue y goods
for that belongeth to the kyng and his lawes to
determine, and therfore if it were ordeined by a
statute of the realme, y he should not i such case
haue the goods til he were of y age of .xxv. yere,
y statut were good and to bee obserued as well
in the spiritual law as in the lawe of the realme,
and if a statut were good in that case, then a de-
cree made therof is not to be obserued, for the or-
dering of the age may not be vnder two seueral
powres, and one property of euery good lawe of
man is y the maker excede not his authoritie,
and I think that the spirituall Iudges in that
case ought to iudge the ful age after the lawe of
the realme, seyng that the matter of the age con-
cerneth temporal goods, and I suppose farther
that as the king by authoritie of his parliamēt
may ordaine y al willes shalbee boide, and that
the goods of euery man shalbe disposed in such
maner as by statut should be assigned, that moze
stronger he may appoint at what age suche wils
as he made shalbe perfozmed. D. thinkest thou
then y the king may take away the powrer of y
ordis

The.xxviij. Chapter. fol.115

ordinary that he shal not call executours to accompte. **S.** I am somewhat in doubt therein but it semeth that if it might bee enacted by statut, & all willes should be void as is aforesayde that then it might bee enacted & no man shoulde haue authoritie to cal none to accompte by such willes, but such as the statut shal therein appoint for he & may do the more, may do the lesse, notwithstanding I will nothing speake determinately in this point at this time, ne I meane not that it were good to make a statute & all willes should be void, for I think them ryght expedient but mine entent is to prooue the common law may ordaine the time of the full age as wel in willes of temporal thinges as otherwise, and also & will shalbe made. And if it may so do the much stronger it belongeth to the kyngs lawes to enterpretate willes concerning temporal thigs as wel when they come in argument before his iudges, as when they come in argument before spiritual iudges, & that they ought not to be iudged by seuerall lawes (& is to say) by the spiritual iudges in one maner, & by the kynges iudges in an other maner.

CIf a man be convict of heresy before the ordinary, whether his goods be forfeyted.

The.xxix. Chapter.

It appeareth in Summa angelica in the title donacio prima the.xij. article. that he that is
P.ij. an

The xxix. Chapter

an heritike may not make executors, for if he laſe his goods be forſayte, what is the lawe of the realme therein. **S.** If a mā be cōuict of heresies and abiure he hath forſeit no goods, but if he be cōuict of heresie & be deliuered to lay mē's hāds then hath he forſeit al his goods that he hath at that time & he is deliuered to them, though he be not put in executiō for & heresy, but his lāds he ſhal not forſait except he be dead for & heresy, & then he ſhal forſait thē to the lordes of the fee, as in caſe of felony, except they bee holden of the ordinary, for then the king ſhal haue the forſaiture, as it appeareth by a ſtatut made the ſecond yere of king Henry the ſift the. vij. chapter. **D.** Mees thinketh that as it belongeth onelye to the church to determine heresies, that ſo it belongeth to the church to determine what puniſhment he ſhal haue for his heresie, except death which they may not be iudges in, but if & church decree & he ſhal therfore forſaite his goodes, mee thynketh that they be forſeite by that decree. **S.**

May verely, for they be temporal and belong to the iudgement of the kings court, and I thinke the ordinary mighte haue ſet no fine vppon one impeched of heresie til it was ordeined by the ſtatut of Henry the. iij. & hee may ſet a fine in the caſe if he ſee cauſe, and then the king ſhal haue & fine as in the ſaid ſtatut appeareth.

¶ Where diuers patrons of an aduoſon and the church voideth, the patrons vary in their preſentments, whether the Biſhop ſhal haue liberty to preſent which of the encumbents that he will or not.

¶ This

The.xxx.Chapter fo.116

The.xxx.Chapter.

This question is asked in Summa rosella, in the title Patronus the ix. article and there it appeareth by the better opinion that he may present whether clarke he will, howbeit the maker of the said summe, saith by y^e rigour of the lawe the Bishop in such case may present a stranger, because the patrons agree not, and in the same chapter Patron^{us} the xv. article.

It is said y^e he must be preferred y^e hath y^e moste merites and hath the most parte of the patrons. And if the number bee egall, that then it is to consider the merites of the patrons, and if they be of like merite, then may the Bysshoppe commaund them to agree and to present again. And yf they cannot yet agree, then the libertie to present is geuen to y^e Bishop to take which he wil and if he may not yet present without great trouble then shal the Bishop order the church i the best maner he can, and if he cannot order it, thē shal he suspend the church & take awaye the relikes to the rebukes of the patrons, and if they wyl not so be ordered then must hee aske helpe of the temporaltie, and in the xv. article of the saide title patronus, It is asked whether it be expediēt in such cases y^e the more part of the patrons agree hauing respect to al y^e patrons or y^e it suffice to haue y^e more part in cōparison of y^e lesse part as thus. There bee. iiij. patrons to present one clarke: the third presenteth another, and the fowerth another, he y^e is presented by. ij. hath not y^e more part in cōparison of all patrons for they be egal, but he hath the more part hauing respect

D. iij. to

The.xxx. Chapter

to the other presentments, to this question it is answered y^e either the presentmt is made of the y^e be of the college, & ther is requisite y^e moze part hauing respect to all the college oz els euery mā presenteth for himselfe as cōmonly do lay mē y^e haue the patronage of their patrimonye, & the it suffiseth to haue y^e moze part in respect of the other partes, both not the law of Englad agree to these diuersities: S. No verily D. what order then shalbe taken in the law of Englande if the patrons vary in their presentmts. S. After the laws of England this order shalbe taken, if they be iointenaunts, oz tenants in cōmon of the patronage, and they vary in presentmt y^e ordinary is not bounden to admit none of their clarks neither the moze part noz the lesse, and if the. vi. moneths pas oz they agree the he may p^resēt by the lapse. But he may not p^resēt wⁱn the. vi. moneths, for if he do they may agree & bzīg a quare impedit against him, & remoue his clark, & so y^e ordinary shalbe as disturbour. And if y^e patrōs haue y^e patronage by discent as coparceners the is the ordinary bound to admit the clarke of the eldest sister for the eldest shal haue the p^rfermēt in the law and if she wil, & then at the next auoirdaunce the next sister shal present & so by turne, one sister after another, til al y^e sisters oz theire heirs haue presented, & then the eldest sister shall begin again, & this is called a p^resenting by turne & it holdeth alway betwene coparceners: of an aduowson. except they agree to present together oz y^e they agree by composiciō to present in some other maner, & if they do so. y^e agremt must stād but

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but this must be alway except, & if at the first a-
voidance & shalbe after the death of the common
auncester, the king haue the ward of the yōgest
daughter, & then the kynge by his prerogative
shal haue the presentment. And at the next auo-
dance the eldest sister & so by turne. But it is to
vnderstand & if after y^e death of the comon an-
cester & church voideth, & the eldest sister p^resented
together wth an other of y^e sisters, & the other sis-
ters enery one in their owne name or together,
& in y^e case the ordinary is not bound to receiue
none of their clarks but may suffer the churche
to run into the laps, as it is said befoze. for he
shal not bee bounde to receiue y^e clark of y^e eldest
sister, but wher shee presenteth in her own nāe.
And in this case wher the patrons vary in pre-
sentment, & church is not properly said litigious
so y^e the ordinary should be bound at his peril to
direct a writ to inquire (de iure patronatus) for
y^e writ lyeth wher t^{wo} present by seueral titles
but these patrons present al in one title, & ther-
foze the ordinary may suffer it to pas if he will
into y^e laps, & this maner of p^resentments must be
observed in this realme in law & cōscience.

CHow long time the patron shal haue to pre-
sent to a benefice.

The. xxxi. Chapter.

This questio is asked in Summa angelica in
the title Jus patronatus the. xvi. article, and
there it is answered & if the patron be a lay mā
that he shal haue. iij. monethes, and if hee bee a
clarke, he shal haue. vi. monethes.

D. iij.

S.

The.xxxj.Chapter

S. And by the common law he shall haue syxe monethes whether he be a lay man oz a clark, & I see no reason why a clarke should haue more respect then a lay man, but rather the contrarye.

D. Fro what time shall the sixe monethes bee accompted. **S.** That is in diuers manners after the maner of the voydaunce, for if y^e church boide by death, creasion, oz cession: the sixe monethes shalbe compted from the death of the encumbent, oz fro the creasion, oz cession, wherof the patron shalbe compelled to take notice at his peril, and if the voidaunce bee by resignacion oz depriuacion, then the sixe moneths shal beginne when the patron hath knowledg geuē him by the Bishop of the resignacion oz depriuacion.

D. What if he haue knowledg of the resignacion oz depriuacion and not by the Bishop, but by some other, shal not the sixe monethes begyn then fro the time of that knowledg. **S.** I suppose that it shal not begin til he haue knowledg geuen him by the Bishoppe.

D. An vnion is also a cause of voydaunce howe shal the vi. monethes be rekoned there. **S.** Ther can no vnion bee made but the patrons must haue knowledg, and it must be appointed who shall present after that vnion, y^e is to say, one of them oz both, either iointly oz by turne one after another as the agrement is vpon the vnion, and sith the patron is priuy to the auoydance and is not ignoraunt of it, the sixe moneths shalbe accompted fro the agreement.

D. I see well by the reason that thou hast made in this Chapter, y^e ignorance sometime excuseth in the law of Eng-
lande

5.6.4.4.ack

The xxxj. Chapter fo. 118

land, for in some of the said auoydaunces it shal excuse the patrons as it appeareth by the reasons aboue, and in some it shall not, wherfore I pray thes shew me somewhat wher ignozāce excuseth in the law of England and where not after thyne oppinion. S. I wyll with good wyll hereafter do as thou saist if thou put me in remembraunce therof. But I would yet mone thee sōewhat further in such questiōs as I haue monied thee before cōcerning the diuersities betwene the lawes of England and other lawes, for there be many mo cases therof & as me seemeth haue right great neede for & good order of conscience of many parsons to be reformed & to be brought into one opiniō both amōg spiritual & temporal, as it is in y case wher doctozs hold opinion & the statut of lay menne that restrayne libertie to geue lands to the churche should bee boide, and they say further & if it were prohibyt by a statut & no gift should be made to foreynes & yet a gift made to the churche should be good for they say & the inferiour may not take away the authoritie of & superiour and this saying is directly against the statutes wherby it is prohibit that lands should not bee geuen into mortmaine, & they saye also that bequestes and gifts to the church must be determined after the law Cannon, and not after the lawes and statuts of laye men, and so they regarde much to whom & giftes is made whether to & churche or to make causways, or to cōmon persons, & beare more fauour in giftes to the churche then to othyr, and the law of the realme beholdeth the thinge & is geuen

The. xxxij. Chapter

geuen & pretended þ if the thing þ is geuen bee of lands oz goods þ the determinacion therof of right belongeth in this realme to þ kings laws whether it be to spiritual mā oz tempoꝛal to the church oz to other, & so is great diuision in this behalf when one þferreth his opiniō, & another his, & one this iurisdiccio, & another þ, & þ as it is to feare moze of singularity then of charity wherfoze it seemeth þ they that haue þ greatest charge ouer þ people specially to þ helth of their soules, are most bound in cōsciēce befoze other to looke to this matter, & to do þ in thē is in al charity to haue it refozmed not beholding þ tēpoꝛal iurisdiccio noꝛ spiritual iurisdiccio but þ cōmon welth & quietnes of þ people, & þ vndoubtedly would shortly folow if this diuision were put away, which I suppose verely wil not be but þ al men whin þ realme both spiritual & tēpoꝛal be ozdꝛed & ruled by one law, as to tēpoꝛall things notwithstanding foꝛasmuch as þ purpose of this wꝛiting is not to treat of this matter, therfoze I wil no farther speake therof at this time D. Thē I pray thee pꝛcede to another questiō as þ saist thy mid is to do. S. I wil & good wil

CIf a man be excommenged whether he may in any case be assayed wout making satisfaccion.

The. xxxij. Chapter.

In the summe called Summa rosella, in the title absolucio quarta, the second article: it is sayde

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saide þ hee is excommunicate for a wzonge if he be able to make satisfaccion ought not to bee assoyled but hee doe satisfie, and that they offed þ do assoyle him, but yet neuerthelesse he is assoyled, and if he be not able to make amendes þ he must yet be assoyled, taking a sufficient gage to satisfie if he be able hereafter, or els that hee make an othe to satisfie if he bee able. And these sayings in many thynges holde not in the laws of England. D. I pray thee shew me wherin the law of the realme varieth therefro. S. If a man be excommunicate in the spiritual courte for debt, trespass, or such other things as belöng to the kings crowne, and to his royal dignitie, there he ought to be assoyled withoute makinge any satisfaccion, for the spiritual court exceedeth their power in that they held plee in those cases and the party if he will may thereupon haue a Premunire facias, as well againste the partye þ sued him, as against the iudge, and therefore in this case they ought in cōscience to make absolucion without any satisfacciō, for they not onelye offended þ party in calling him to answer before them of such things as belöng to the law of þ realme, but also þ king, for he by reaso of such suites may leese great aduātages by þ reaso of the writs originals, iudicials, fines, amerciamētes & such other things as might grow to hi if suites had ben take in his courts accordig to his laws, & accordig to his saying it appereth i diuers statuts þ if a mā lay violēt hands vpon a clark & beat him, þ for the beating amendes shall be made in the kings courte, and for the laying of
of

The xxxij. Chapter

of violent handes vpon the clarke amends shall be made in the court chrystien. And therfore if y^e iudge in the court chrystien woulde a warde the party to yeld damages for the beating, he did against the statute, but admit that a man bee excommenged for a thyng that the spirituall court may award the party to make satisfaction of, as for the not inclosing of y^e churchyard, or for not apparelyng of the church conueniently. The I thinke the partye must make restitution or lay a sufficient caucion if he be able or he bee assoyled, but if the partye offer sufficient amends and haue hys absolucion, and the iudge wyll not make him his letters of absolucion, yf the excommengement bee of recorde in the Kinges courte then the king may wyte vnto the spirytual Iudge commaunding him that hee make the party his letters of absolucion vpon payn of a contempt, & if the said excommunicaciō be not of recorde in the kynges courte then the partye may in such case haue his accion against y^e iudge spiritual for that hee woulde not make hym hys letters of absolucion, but if he be not assoyled or if he bee not able to make satisfactiō & therfore the iudge spiritual wil not assoile him, what the kinges lawes may do in that case I am somewhat in doubt, and will not muche speake of it at this time, but as I suppose hee maye as well haue his accion in that case for the not assoilinge him, as wher he is assoiled, and y^e the iudge will not make him his letters of absolucion, and I suppose the same lawe to be where a man is accursed for a thyng that the iudge had no power

The xxxiiij. Chapter. fo. 120

to accurse hi & as for debt, trespass or such other
D. Ther he may haue other remedies as a Pre-
munire facias, or such other, & therefore I sup-
pose the other accyon lyeth not for him. S.

The iudge and the party may be dead, and then
no Premunire lyeth, & though they were aliue
and were condemned in Premunire, yet that
should not auoid excommenement, & therfore
I think the accion lieth specially if he be therby
delayed of accions & he might haue in the kings
court, if the said excommenement had not ben.

Whether a Prelate may refuse
a legacye.

The xxxiiij. Chapter.

I T is moued in the sayde sūme named Rosela-
la, in & title Alienacio. xx. the. xi. article whe-
ther a prelate maye refuse a legacye, wherein dy-
uers opinions be recited ther, which as me thi-
keth haue nede after the lawes of the realme to
be moze plainely declared. D. I pray thee shew
mee what the law of the realme wyll therein.

S. I think that euerye prelate and soueraign
& may onelye sue and bee sued in his owne name
as Abbottes, Bishops, and suche other maye
refuse anye legacye that is made to the house, for
the legacye is not perfect tyll hee to whom it is
made assent to take it, for els if he might not re-
fuse it, hee myght bee compelled to haue landes
wherby he myght in some case haue great losse,
but

The. xxxiiij. Chapter

but then if he intende to refuse, he must as soone as hys title by the legacy failethe, relynquy the to take the profits of the thing bequethed, for if one take the profits thereof, hee shal not after refuse the legacy: but yet his successour maye yf he will refuse the takinge of the profits to saue the house fro yelding of damages oz fro arrearages of rents if any such be, and like lawe is of a remainder as is in legacye. for thoughe in the case of a remainder, and also of a deuise as most men say, y frehold is cast vpon him by the lawe when the remainder oz deuise falleth: yet it is in his libertie to refuse the taking of the profits & to refuse the remainder if hee will as hee myght doe of a gift of landes oz good, for if a gyfte bee made to a man that refuseth to take it, the gyfte is boide, and if it bee made to a man that is absent, the gyft taketh not effect in him tyll hee assent: no more then if a man dislease one to another mannes vse, hee to whose vse the disleynson is made, hath nothing in that land ne is no dysseisour til he agree. And to suche disleynsons and giftes, an Abbot oz Priour may disagree aswel as any other man, but after som men a Bishop of a deuise oz remainder y is made to y Bishop & to y deane & Chapter, noz a Deane & a Chapter of a deuise oz remainder made to the ne yet y master of a colledge of such a deuise oz remainder made to him & to his brethren, may not disagree wout y Chapter oz brethren, for the Bishop of such lands as he hath w the Dean and Chapter, ne the Deane noz master of such lād as they haue with y Chapter oz brethren may not

The xxxiiij. Chapter. fo. 121

not answer, About the chapter & brethren, and
therfore some say þ if the Deane or maister wil
refuse or disclayme in the landes þ they haue by
the deuise or remainder, þ disclaimour withoute
the chapter or brethren is boide. And therfore it
is holden in the lawe þ if a Bishop bee vouched
to warrantye, & the tenaunt byndeth him to the
warrantye by reason of a lease made to him by þ
Bishop and by the deane and the Chapter, yel-
ding a rent, þ in that case the bishop may not dis-
claine in þ reuerſion withoute the assent of the
Deane and chapter. But yet if a reuerſion were
graunted to a deane and a Chapter & þ deane re-
fuse, the graunt is boide, and so it appeareth þ
a deane maye refuse to take a gift or graunt of
landes or goods or of a reuerſion made to hym
and to the chapter and yet he may not disagree
to a remainder or deuise, and the diuersity is be-
cause þ remainder and deuise be cast vpon him
without any assent, wherunto neither the deane
nor the chapter by themselves may in no wise dis-
agree About the assent of the other, but a gift or
graunt is not good to them About they both as-
sent, and in such gistes as I suppose an infant
may disagree as well as one of full age, but yf a
woman couert disagree to a gift, and þ husband
agree, þ giste is good. D. What if the landes
in that case of a manne and his wife be charged
with damages, or be charged w more rent then
the land is worth, and the husband die, shal the
wyfe bee charged to the damages or to the rent.
S. I thinke naye if the wife refuse the occu-
pacion of the ground after her husbandes death.
and

The. xxxiiij. Chapter

& I think the same law to be if a lease bee made to h husband & to h wife yelding a greater rēt thē h land is worth, h h wife after h husband's death may refuse h lease to saue her fro the payment of the rent, & so may the successor of an Abbot. And if the husband in h case ouer liue the wyfe and then make his executours and die, whether may his executours in like wise refuse the lease. **S.** If they haue goods sufficient of their testatour to pay the rent, I thynke theye maye not refuse it, but if theye haue not good suffycient of their testatours to pay the rent to the ende of the terme, I thynk if theye relinquishe the occupation they may by speciall pleadinge discharge them selfe of the rent and the lease, and yf theye do not they may lightly charge thē self of theire owne goodes. And if a lease bee made for terme of lyfe the remainder to an Abbot for terme of lyfe of I hon at Style, reseruing a greater rente then the lande is worth, and after the tenaūt for terme of life dyeth the Abbot may refuse the remainder for the cause befoze reherſed, & in case that the Abbot assent to the remaynder wherby he is charged to the rēt during the time h he is Abbot, and after he dieth or is deposed liuing the said I hon at Style, in h case hys successor may discharge him selfe by refusing the occupation of the lande as is aforesayde, But I think that if suche a remaynder were made to a deane and to the chapter, and the dean agree without the assent of the Chapter, that in that case the deane and the Chapter may afterward disagree to the remaynder, and that the acte of the deane
With

The xxxiii. chapter. fo. 122

out þ assent of the Chapter shal not charge the chapter in þ behalfe, & thus it appereth though þ meaning of þ said chapter & article in the said lūme be, þ a prelate may not disagree vnto a legacy for hurting of the house, yet he may after þ laws of þ realme disagree therto wher it should hurt his house. And if in a precepe or reddat ther be but one tenant be he spirituall or tēporal, & he refuse by way of disclaimer in such case where he may disclaime by þ lawe, ther þ lād shal vest in þ demāndāt, & if ther be two tenants thē it shal vest in his felow, if he wil take þ whole tenācy vpon him or els it shal vest in þ demāndāt. But if an Abbot or a lay mā refuse þ taking of þ profits, & shew a speciall cause why it should hurt him if he did assent & be therby discharged as is said befoze. In whō the lād shall thā veste it is moze doubt, wherof I wil no farther speake at this tyme. And thus it appereth by diuers of þ cases þ be put in this chapter þ he þ is ignorant in the law of þ realme, shall lacke þ true iudgement of conscience in many cases. For in many of these cases that maye be done therein by þ law must also be obserued in conscience &c.

Whether a gift made vnder a condicion be voide if the soueraigne onelye bzeake the condicion.

The xxxiiij. chapter.

In Summa rosella in the title alienacio, the xij. article is asked this question whyther a
Q. j.
gifte

The xxxiiii. chapter.

giste made vnder a certeine fourme may bee auoided or reuoked, because the Prelate or Soueraigne onely did breake the fourme, and it is there answered that it may not for that y^e deed of the Prelate onely ought not to hurt y^e church and if those woordes vnder a maner be vnderstande of a giste vppon condicion as they seeme to bee, than the said solucion holdeth not in this Realme neither in law nor conscience. **D.** What is than the law of Englande if a man enfeoffe an Abbot by deed indented vppon condicion that if the Abbot pay not to the feoffour a certeine s^ume of money at such a day that than it shalbe lawfull to the feoffoure to reentre, and at that daye the Abbot sayleth of his payments maye the feoffoure lawfullye reentre and put out the Abbot. **S.** Yea verelye for he had no right to the lande but by the giste of the feoffour and his gift was condicionell, & therfore if the condicion be broken it, is lawfully by the law of England for the feoffour to reentre, & to take his lande againe and to holde it as in his first estate, by which reenter after the lawes of the realme he dispo^ureth the first liue^rye of seison, and all the meane ad^ues done betwene the first feoffement and the reenter, and it forceth little in the law in whom the default bee that the condicion was not p^urfourmed whether in the Abbot or in his couent or in bothe: or in any other parson what soeuer he be except it be in the feoffour himselfe. And it is greate diuersitie betwene a cleare giste made to an Abbot without condicion, and where it is made
wyth

The xxxiiii. chapter. fo. 123

With condicion, for-whā it is made without cō
dicio the acte of the Abbot only shal not by the
common laswe disherite the house, but it bee in
very fewe cases, but yet vppon diuers statutes
the sufferance of the abbot only may disherite
the house as by his ceasser, or by leauyinge of a
crosse vpon a house against the statute thereof
made, in which case the house thereby shal leese
the land, & some say that by the common law vpon
his disclamour in auowry a writ of right of
disclamour lieth, but if the gift be vpon cōdici-
on it stādeth neither to law nor conscience that
the Abbot should haue any more partit or sure
estate than was geuen vnto him, and therefore
as the saide estate was made to the house vpon
condicion so that estate may be auoided for not
p̄fourming of the condicion, and I thinke be
rely that this I haue said is to be holdē in this
Realme, both in the law and conscience, & that
the decrees of the church to the contrary binde
not in this case. But if landes be geuen to an
Abbot and to his couent to the intent to finde
a Lampe, or to geue certayn almes to poore
men though the intent bee not in those cases
fulfilled, yet the feoffoure nor his heires may
not reenter for he reserved no reētre by expresse
wordes, ne in the wordes whan he saith to y
intent to finde a Lampe or to geue almes &c.
Is implied no reentre, ne the feoffour nor his
heires shal haue no remedye in suche cases vn-
lesse it bee within the case of the statut of west-
minster the second that geueth the Cessauit de
Cantaria.

D. ij.

Whether

The xxxv. chapter.

**Whether a couenant made vppon a gyfte
to the Church that it shall not be
alyened (be good.)**

The xxxv. chapter.

In the saide summe called Summa rosella in
the said title alienaciō, the xiiij. article is asked
this question, whether a couenant made vpon
a gift to the churche & it shal not be aliened bee
good. And the same question is moued againe in
the said summa called rosella, in y title cōdicio y
first article & in Summa Angelica, in y title Do
natio prima, the li. & lii. articles, and the intēt of
the questiō ther is whether notwithstanding &
the condicion be good to some alienacions, whe
ther y yet it be good to restraine alienaciōs for
the redēpciō of thē that be in captiuitie vnder y
infidels or for the greater aduātage to y house
and though the better oppinion be there that y
condicion may not bee broken for redēpciō of
them that bee in captiuitie : yet it is in maner a
whole opinion that it may be sold for the greater
aduantage to the house, for it is sayd ther that
it may not bee taken but that the intente of the
geuer was so, and therfore they cal the cōdicio
that prohibiteth it to be solde (condicio turpis)
that is to say a vile condicion, wherfore they re
gard it not: but verely as I take it if a condi
cion may restraine any maner of alienaciō thā
it shal as wel restraine alienacions for the two
causes befoze rehearsed, as for any other causes
& though me thinketh y that cōdicio is good, &
after

The xxxv. chapter. fo. 124

after the lawes of the realme that bypon giftes
to the Church restraineth alienacions, yet I
shal touche one reason that is made to the con-
trary, that is this. There is a cleare grounde in
the law, that if a feoffement be made to a com-
mon parson in fee bypon condicion that y^e feoffe
shal not alien to no man, that condicion is voide
because it is contrary to the estate of a fee sym-
ple to bind him that hath that estate y^e he should
not alien if he list, and some saye that an Abbot
that hath lande to hym and to his successours
hath as highe and as p^{er}ite a fee simple as hath
a laye man that hath land to him and to his hei-
res, and therfoze they say that it is as wel a-
gainst the law of the Realme to prohibire that
the Abbot shal not alien, as it is to be prohibit a
lay man thereof, and though it bee therein true
as they saye as to the highnes of the estate, yet
me thinketh there is great diuersitye betwene
the cases concerning their alienacions, for whan
landes be geuen in fee simple to a common par-
son: the intent of the law is that the feoffe shall
haue power to alien, and if hee do alien, it is not
against the intent of the lawe, ne yet agaynst
the intent of the feoffour, but whan landes bee
geuen to an Abbot and to his successours, the
intent of the law is, & also of the geener as it is
to p^{re}sume, that it should remaine in the house.
for ever, and therfore it is called Mortmain, &
is to say, a dead hand as who saithe that it shall
abide there alway as a thing deade to the house
And therfore as I suppose the law will suffer
that condicio to be good that is made to restraine

D. ij.

that

Antea 39.
Ante 84. a.
28H 7.8. a.

The xxxv. chapter.

that such mortmaine should not be aliened and that yet it maye prohibite the same condicion to bee made vpon a feoffement made in fee simple to a man and to his heires for y^e is the most high the most free, and the most purest, state y^e is in the lawe. But the lawe suffereth such a condicion to be made vpon a gifte in taile because the statut prohibiteth that no alienacion should bee made thereof. And the as the lawe suffereth such a condicion vpon a gifte in mortmaine, that is to say, that it shal not be aliyened, to bee good than it indgeth the condicio also according to y^e wordes, that is to saye, if the condicion be generall that they shal alien to no mā as this case is that it shalbe taken generally according to y^e wordes, and it shal not be taken that the intent of the geuer was otherwise than he expessed in his gifte, though he parcase if he were aliyue himselfe and the question were asked him whether he would be contēted it should bee aliened for the said two causes or not, hee would saye ye, but whan he is deade no man hath auctority to interprete his gifte otherwise than the lawe suffereth, nor otherwise than the words of the gifte be. And if the condicion be special that is to say, that the land shal not be aliyened to suche a man or such a man, than the condicio shal be taken according to the words, and than they may be aliened as for that condicion to anye other but to them to whom it is expresselye prohibite that the land should not be aliened to. And if the landes in that case bee aliyened to one that is not except in the condicion, than he maye
aliyene

alien the lande to him & is firste excepted without breaking of the condicion, for condicions bee taken straitely in the lawe and without equity. And thus me thinketh that because the said condicion is generall and restraineth al alienaciōs, that it may not be aliened neither by the law of the realme, ne yet by conscience, no more for the sayde two causes, than it maye for anye other cause, and this case must of necessite be iudged after the rules and groundes of the law of the realme and after no other law as mee seemeth.

If the patron present not within vi. monethes, who shal present.

The xxxvi. chapter.

In the saide summe called Summa rosella, in the title Beneficium in principio it is asked, if the patron present not within syxe monethes who shall presente and within what time the presentment muste be made. And it is answered there, that if the patron presente not within vi. monethes, that the chapter shall haue sixe monethes to present, and if the chapter present not within vi. monethes, & than the Byschoppe shal haue other vi. monethes. And if hee be negligent, then the Metropolitane shall haue other vi. monethes, and if hee present not than & presentment is deuolue to the Patriarke. And if the metropolitane haue no superiour vnder the Pope, then the presentment is deuolue to the

N. iij. Pope

The xxxvi. chapter.

Pope. And so as it is saide there the Archebys-
shop shal supply the negligence of the byshoppe
if he be not exempte, and if he be exempte & pre-
sentment immediatlye shal fall fro the Bishop
to the Pope. And as I suppose these diuersitie
es hold not in the lawes of the realme.

D. Than I pray thee shew me who shal pre-
sent by the lawes of the realme if the patron do
not present within this sixe monethes. **S.**

Than for defaulte of the patron the Byshoppe
shal present vnlesse the king be patron, and if
the Bishop presente not within sixe monethes
than the Metropolitane shall present whether
the bishop be exempt or not. And if the Metro-
politane present not within the time lympted by
the lawe, than there bee dyuers opinions who
shal present, for some say that the Pope shall
present, as it is saide befoze, and some saye the
king shal present. **D.** What reason make

they that saye the kinge shoulde present in that
case. **S.** This is their reason they say that the
king is patron paramounte of all the benefices
within the realme. And they say further that &
kinge and his progenitours kinges of England
without time of minde haue had aucthoritye to
determine & right of patronages in this realme
in their owne courtes, and are bounde to see
their subiectes haue right in that behalfe with-
in the realme, and that in that case fro him lieth
no appeale. And than they say that if the Pope
in this case shoulde presente that than the kinge
should not onely leese his patronage paramout
but also that he should not some time be hable to

do right to his subiectes.

D. In what case were that. **S.** It is in this case the law of the realme is, that if a benefice fall voide that the patron shal present ~~in~~ in vi. monethes: and if he doe not that than the ordinarie shal present, but yet the lawe is farther in that case, that if the patron presente before the ordinarie put in his Clerk: that than the patron of right shal enjoy his presentment, and so it is thought the time shoulde fall after to the Metropolitane or to the Pope, and if the presentment shoulde fall to the Pope, than though the aduowson abode stil voide, so that the patron might of righte present, yet the patron shoulde not knowe to whom hee shoulde present, vnlesse he should go to the Pope, and so he should faile of right within the realme. And if parcase he went to the Pope and presented an hable clerke vnto him & yet his clerke were refused & another put in at the collatio of y^e Pope or at the presentment of a straüger, yet y^e patrō could haue no remedy for that wrong win the realme, for the encumbent mighte. abyde still out of the realme. And therefore the law wil suffer no tittle in this case to fall to the Pope. And they say, y^e for a like reason it is that y^e law of the Realme wil not allow an excommunge-ment that is certified into the kings courte, vnder the Popes Bulles, For if the party offered sufficiente amendes, and yet coulde not obtaine his letters of absolution, the king shoulde not know to whom to writ for the letters of absolution, & the party could not haue righte, and that

The xxxvi. chapter.

that the law wil in no wise suffer. **D.** The patrone in that case may present to the ordinarie as long as the churche is voide, and if the ordinarie accept him not, the patron may haue his remedy against him within the realme.

But if the Pope wil put in an encumbent befoze the patron present, it is reason y^e hee haue the preferment as me seemeth befoze the king.

S. Whan the ordinarie hath surcessed his time he hath lost his power as to that presentment, specially if y^e collacion be deuolute to the Pope. And also whan the presentment is in the Metropolitane he shal put in y^e clerke himself & not the ordinarie, and so there is no defaulte in the ordinarie though he present not the Clarke of the patrone if his time be past, and so there lyeth no remedy against him for the patron. **D.**

Though the encumbente abide stil out of the Realme yet may a Quare impedit lye agaynst him within the realme, and if the encumbente make default vpon the distresse and appere not to shew his title: than the patron shal haue a writ to the Bishoppe accoordinge to the statute & so he is not without remedy. **S.** But in this case he can not be somoned, attached, nor distrained, within the Realme. **D.** He may bee

somoned by the Church as the tenaunt maye in a writ of right of aduowson. **S.** There the aduowson is in demaunde, and here the presentment is onely in debate, and so hee can not bee somoned by the churche here no moze than if it were in a writ of annuitie. and there the common returne is (q^{uod} cleric^{us} est & beneficiatus non

The xxxvi. chapter. fo. 127

non habens laicum feodum ubi potest summoneri) And though he might bee summoned in the church, yet he might neither be attached nor distrained there, and so his patron should be without remedy. D. And if he were without remedy, he should yet be in as good case as he should be if the king should present, for if his title should be given to his king, the patron had lost his presentment clerely for his time though the church abide still void. For I have heard say that in such presentments no time after the law of his realme remaineth unto the king. S. That is true, but then the presentment should be taken from him by right and by the law and here it should be taken from him against the law, and whereas the law could not helpe him & that the law will not suffer. D. yet me thinketh alway his title of the laps in such case is given by the law of the church, & not by his temporal law, and therefore it forseth but little, what the temporal law will in it as me seemeth S. In such countries wher his Pope hath the power to determine his right of temporal things I thinke it is as thou saist, but in this Realme it is not so. And his right of presentment is a temporal thing, & a temporal inheritance, and therefore I thinke it belongeth to the kings lawe to determine, and also to make laws who shal present after the vicarmonies as well as before, so his title of examination of ability or nonability be not thereby taken from the ordinary, & in like wise it is of avoidance of benefices, that is to say, than it shalbee iudged by the kings lawes whan a benefice shal be saide void & whan not
and

The xxxvi. chapter.

204. B. 40.
Office. 47.
S. M. B. 2. 12.
ntation. 61. 24
Commission. 25.

and not by the lawe of the Church as whan a p
son is made a bishoppe or accepteth another be
nefice without licence, or resigneth, or is depri
ued, in these cases the common lawe saith, that
benefices be void, and so they should be, though
a lawe were made by the church to the contrary,
and so if the Pope should haue any title in this
case to present, it should bee by the lawe of the
Realme. And I haue not secene ne heard that
lawe of the realme hath geuen any title to the
Pope to determine any temporal thing & maye
be lawfully determined by the kings courte.

D. It seemeth by that reason that thou hast
made now that thou preferrest the kinges au
thoritie in presentmentes befoze the Popes,
and that me thinketh should not stand with the
law of God: sith the Pope is the vicar generall
vnder God. S.

That I haue saide pro
ueth not &, for the highest preferment in presen
tments is to haue authoritie to examine & abili
tie of the parson & is presented, for if & presentee
be able, it suffiseth to the discharge of the ordi
nary, by whom so euer hee bee presented & that
authoritie is not denied by the law of the Re
alme to belong alwaye to the spiritual iurisdic
tion, but my meaning is, that as to the right of
presentments and to determine who oughte to
presente and who not, and at what time, and
whan the Church shall bee iudged to be boyde,
and whan not, belonging to & king & his lawes
for els it were a thing in vaine for him to holde
plee of aduowsons or to determine the right of
patronage in his owne courtes and not to haue
authoritpe

authoritie to determine & right therof, & these
 claimes semeth not to be against the law of god
 And so me semeth in this case & presentment is ge-
 uen & king. D. And if & king should haue righte
 to present thā might & church happen to cōtinue
 void for euer, for as we haue said before no time
 renneth to & king in such presentments. S. If
 any such case happe if & kinge present not, than
 may & ordinary set in a deputy to serue & cure
 as he may doe whan negligence is in other pa-
 trōs & may plēt & do not, & also it cā not be tho-
 ught & the king which hath & rule & governāce
 ouer & people not only of their bodyes, but also
 of their soules wil hurt his conscience & suffer a
 benefice continually to stande without a curate
 no more than hee doth in aduowsons & be of his
 owne presentment.

¶ Whether the presentment and collacion of all
 benefices & dignities, voiding at Rome be-
 long onely to the Pope.

¶ The xxxviij. chapter.

In the same summe called Summa rosella in
 the title Beneficium primum, in the xij. arti-
 cle. It is saide that benefices, dignities, and p-
 sonages, voiding in the court of Rome may not
 be geuen but by the Pope & likewise of the Po-
 pes seruantes and of other that come and goe
 fro the court, if they dye in places nye to the
 court within two daies iourney, al these bee-
 long to the Pope, but if the Pope presente not
 with

The xxxvii. chapter.

Within a moneth: than after the moneth they to whom it belongeth to present, may presente by themselves onely or by their vicar general if they be in farre parties, & these sayinges hold not in the law of the realme. D. What is y^e cause that they holde not in this realme as wel as in al other realmes. S. One cause is this. The king in this realme accordinge to the aunciente righte of his crowne, of all his aduowsons y^e be of his patronage osweth to p^rsent. And in likewise other patrons of benefices of their presentment, and the plee of the right of presentments of benefices within this realme belonge to the king and his crowne. And these titles can not be taken fro the king and his subiectes but by their assent, and the lawe that is made therein to put asway y^e tittle bindeth not in this realme and ouer y^e before y^e statut of xxv. of Edward the ij. there was a great inconuenience & myschiefe, by reason of diuers p^rouisions and reseruacions that the Pope made to the benefices in this realme cōtrary to the olde right of y^e kinge & other patrōs in this realme, as wel to y^e archbishoppricks, Bysshoppricks, Deanries, and abbies, as to other dignities and benefices of the church. And many times aliē therby had benefices within the realme that vnderstode not the English tongue, so that they could not cōsaile ne comfort the people when neede required, and by y^e occasion great riches was conuaided out of the Realme. Wherefore to auoide such inconueniences: it was ozdained by the said statut that all patrones as well spyrituall as temporall should

shoulde haue the presentmentes freely, and in
 case that collacion or prouisiō were made by the
 Pope in disturbance of any spirituall patron &
 than for that time the kinge shoulde haue the
 presentmente, and if it were in disturbaunce of
 any lay patron: that then if the patron presen-
 ted not within the halfe yere after such voidāce
 nor the bishop of the place within a moneth af-
 ter the halfe yere: that than the kinge shoulde
 haue also the presentmente, and that the kynge
 shoulde haue the profits of the benefices so oc-
 cupied by prouision excepte abbeis and priors
 & other houses that haue coledge and couēt, and
 ther the coledge and couent to haue the profits
 and because the statut is general & excepteth not
 such benefices as shall voids in the courte of
 Rome or in such other place as befoze appereth
 therfore they be taken to bee within the prouis-
 sion of the said estatute as wel as the benefices
 that voids within y realme, and all prouiseurs
 and executours of the said collacions and prouis-
 sions, & all their attourneis, notaries, & mainte-
 nets shalbee out of the proteccion of the kynge,
 and shall haue like punishment as they shoulde
 haue for executyng of benefices voidinge with-
 in the realme. D. But I can not see how y said
 statute may stand with conscience, & so farre re-
 straineth the Pope of his liberty, which as me-
 semeth he ought in this case righte to haue. S.
 Because as I suppose y patros ought of right
 to haue their p'sents vnder such maner as they
 claime the in this realm as I haue said befoz, &
 as in y xxvi. cha. of this booke appereth moze at
 large, & also forasmuch as it appereth enidēty &

The xxxviii. chapter.

that great inconuenience folowed vpon the said
prouisions, and that the said estatut was made
to auoide the same, which sithe that time hath
bene suffered by the Pope and hath bene alway
vsed in this realme without resistauce that the
saide estatute shoulde therfore stand with good
conscience.

If a house by chaunce fall vppon a horse
that is bozowed who shal beare
the losse.

The xxxviij. Chapter.

In the said summe called Summa rosella, in
the title Calus fortuitus, in the begynning is
put this case, if a man lende to another a horse
whiche is called there Depositu[m], and a house
by chaunce falleth vppon the horse, whether in
that case hee shal aunswere for the horse. And
it is aunswere there that if the house were like
to fall that then it can not be take as a chaunce
but as the default of hym that had the horse de
liuered to hym. But if the house were stronge
and of likelihoode and by commo[n] presumprion
in no danger of fallinge but that it fel by so-
daine tempest or such other casualty that than
it shal bee taken as a chaunce, and he that had
the keepinge of the horse shalbee discharged and
though this diuersitie agreeth wth the lawes of
the realme, yet for the more plainer declaraci-
on thereof and for the more like cases & chaunces
that maye happen to goodes that a man hath
in

12. 29. et 29.
11. 8. 11. 23.

The. xxxviij. Chapter. fo. 130

in his keeping & be not his owne. I shall adde a litle moze thereto & shalbe somewhat necessary as mee thinketh to the orderinge of conscience. First a mā may haue of another by way of lone or bozowing, money, cozne, swine, & suche other thinges where the same thyng cannot be deliuered if it be occupied, but another thing of like nature & like value must be redeliuered for it, & such things he that they be lent to, may by force of & lone vse as his owne. And therfore if they perishe, it is at his ieopardye & this is most properly called a lone. Also a man maye lende to another a horse, an ore, a cart, or such other thigs that may be deliuered againe, and they by force of that lone may be vled and occupied reasonably in such maner as they were bozowed for, or as it was agreed at the tyme of the lone & they should be occupied, and if such things bee occupied otherwise then according to the intent of & lone, and in that occupaciō they perish, in what wise soeuer they perish, so it be not in default of the owner, hee that bozowed them shall bee charged therewith in lawe and conscience, and if he that bozowed them occupy them in suche maner as they were lent for, & in & occupacion they perish in default of him & they were let to, then hee shal aunswer for them. And if they perish not thzough his defaulte, then hee & owtch them shall beare the losse. Also if a man haue goods to keepe to a certain day for a certain recompence for & keeping, he shal stād charged or not charged, aft as default or no default shalbe i hī as befoze appeareth, & so it is if he haue nothing

The xxxviiij. Chapter

for y^e keeping, but if he haue for y^e keeping & make
promises at the time of the deliuey to redelyuer
them safe at his perill, then he shalbe charged wth
al chaunces that may fall. But if he make that
promise and haue nothing for keeping: I thinke
he is bound to no such casualties, but y^e be will-
ful & his owne default, for y^e is a nude oz a na-
ked promise wherupon as I suppose no accyon
lieth. Also if a man finde goodes of another yf
they be after hurt oz lost by wilful negligēce, he
shalbe charged to the owner, but if they be losse
by other calualtye as if they bee layde in a house
that by chaunce is burned, oz if he deliuer thē to
another to kepe that runneth away wth them,
I thinke hee be discharged, & these diuersities
hold most commonly vpon pledges, oz where a
mā hiereth goods of his neighbour to a certain
day for certe in money, & many other diuersities
be in the laswe of the realme what shalbe to the
ieopardy of the one, & what of the other, which
I will not speake of at this time. And by this it
may appere that as it is commonly holden in the
lawes of Englande if a common carier goe by
byswayes that be daungerous for robbinge, oz
druie by night oz in other inconuenient tyme &
be robbed, oz if he ouer charge a horse wherby
he falleth into the water oz otherwise, so y^e the
stufte is hurt oz unpeyzed, y^e he shal stand char-
ged for his misdemeanour, & if hee would please
refuse to cary it, vnles promise were made vnto
him y^e he shal not be charged for no misdemea-
nour y^e should be in him, that promise wer void.
For it were agais̄t reasō & agais̄t good maners
and

The. xxxix. Chapter. fo. 131

and so it is in al other causes like. And all these diuersities be graunted by secondary cōclusiōs deriued vpon the law of reason wout any estate made in that behalfe. And peradventure lawes and the conclusions therein bee the more plaine & the more open. For if anye statut were made therein, I think verely no doubts & questions would rise vpon y^e statut then doth nowe when they be onely argued & iudged after y^e cōmon lawe.

C If a priest haue wonne much goods by sayig of masse, whether he may geue those goods or make a will of them.

The. xxxix. Chapter.

In the saide sūme called Sūma rosella in the title clericus quartus y^e third article, is asked this question if a priest haue won muche goods by saying of masse whether he may geue those goods or make a will of them, wherto it is answered there that hee may geue them or make a will of them specially whē a mā bequeth money for to haue masses said for him, & y^e like lawe is of such things as a clark winneth by y^e reasoⁿ of an office. For it is said ther, y^e such things come to him by reasoⁿ of his own pson, which sayings I think accord wth y^e law of y^e realme. But forasmuch as iⁿ y^e said article & in diuers other places of the saide chapter, & in diuers other chapters of the said sūme is put great diuersity betwene such goods as a clark hath by reason of hys

church

The xxxix. Chapter

church and such goods as he hath by reason of his person, and þ he must dispose such goods as he hath by reaso of his church in such maner as is appointed by the law of the church, so that he may not dispose them so liberally as he may the goods that come by reason of his owne person, therfore I shal a little touch what spiritual me may do with their goods after the laswe of the realme.

First a Bishop of suche goods as hec hathe with the Deane and the Chapter he may neyther make gifte nor bequest, but of suche goods as he hath of his own by reaso of his church or of the gift of his auncesters or of any other, or of his patrimony he may both make giftes and bequests lawfully. And an Abbot of the goods of his church may make a gift & þ gifte is good as to þ lawe. But what it is in conscience that is after the cause & intent & qualitie of the gyft for if it be so much þ it notablie hurteth þ house or the conent, or if he geue away the bookes, or þ chalices, or such other things as belong to the service of God, he offendeth in conscience, & yet he is not punishable in the law, ne yet by a Sub pena after som men, ne in none other wise but by the law of the church as a waster of the goods of hys monastery. But neuertheles I wil not fully hold þ opinion as to þ that belongeth necessarily to þ service of god, whether any remedy lie against him or not, but remit it to þ iudgement of other. And a Deane and a Chapter & a maister & brethren of goods that they haue to themselfe. And also of goods þ they haue w the Chapter

The. xxxix. Chapter fo. 132

Chapiter & bzethzen the same diuersity holdeth as appeareth befoze of a Bishop and the dean and chapiter, except that in the case of a master & bzethzen the goods shalbe ordered as shalbee assigned by the foundation. And moze ouer of a person of a church vicar, and chantry priest, or such other, all such goods as they haue, as well such as they haue by reason of the personage vicarage, or chauntry, as y they haue by reaso of their own person they may lawfullye giue and bequeth where they wil after the common law. And if they dispose part among the parishners, & part to y building of churches, or giue part to the ordinary, or to poze me, or in such other manner as is appointed by the lawe of the church they offende not therein, vnles they think them self bounden therto by duty & by authorite of y lawe of the church, not regardyng the kinges lawes, for if they doe so it semeth they resist the ordinaunce of God, which hath geuen power to Princes to make lawes. But thereas the Pope hathe souereinty in temporall thinges as he hath in spiritual thinges, there some say that y goods of priestes must in cōsciēce be disposed as is conteined in y said summe, but y holdeth not in this realme, for y goods of spirituall men be tēporal in what maner soeuer they cōe to thē & must be ordered after the temporall law as the goods of the temporall men must be. Howbeit if there were a statute made in thys case of lyke effect in many points, as the law of the church is. I think it were a right good and a profitable statute.

R. ij.

Who

The.xl. Chapter

¶ Who shal succede a clarke that dieth intestate

¶ The.xl. Chapter.

I N the saide summe called rosella in the Chapter Clericus quartus the.vij. article, is asked this question, who shal succede to a clarke & dieth intestate. And it is answered & in goods gotten by reason of the church, the church shall succede. But in other goods his kinsmen shall succede after the order of the law, and if ther be not kinsmen then the church shal succede. And it is ther said further & goods gotten by a Canon secular by reason of hys church or prebend shall not go to his successour in the prebende but to & chapter. But wher one that is beneficed is not of & congregation, but he hath a benefice clerely separte, as if he be a person of a parish church or is a president, or an Archdeacon not beneficed by the chapter, then the goods gotten by reason of his benefice, shal go to his successor and not to the Chapter, and none of these sayings hold place in the laws of Englande. D. What is then the lawe if a person of a church or a bycar in the countrey die intestat or if a Canon secular be also a parson & haue goods by reason thereof & also by a prebend & he hath i a cathedral church & he die intestate who shal haue his goods. S. At & comon law & ordinary in al these cases may administer the goods and after he must commit administration to the nexte saythfull frendes of

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of him that is dead intestate that wil desire it as
hee is bounde to doe where laye men that haue
goods dye intestate. And if no man desire to
haue administracion then the ordinary may ad-
minister & see the debts payd, & he must beware
þ he pay þ debts after such order as is appoin-
ted in the cōmon lawe, for if he pay debts vpon
simple cōtracts befoze an obligaciō he shalbe cō-
pelled to pay the debt vpon the obligaciō of his
ōwn goods yf there be not goodes sufficient of
him that dyed intestate, & though it be suffred in
such case that the ordinary may pay pounde and
pound like þ is to apporcion, þ goodes amonge
the dettours after his discrecion, yet by þ rigor
of the cōmon law he might be charged to him þ
can first haue his iudgement against him. And
farthermoze by that is said afoze in the last cha-
piter appeareth if a Bishop þ hath goods of his
patrimony, or a master of a colledge, or a deane
of goods that they haue of their owne onelye to
themself die intestate, þ the ordinary shal cōmit
administraciō therof as befoze apereth & if they
make executozs then the executours shall haue
the ministracion therof. But the heirs nor the
kinsmen by that reason only that they be heirs
or of kin to him þ is dicessed shall haue no med-
deling with his goods except it be by custom of
some countreys where the heirs shal haue their
lomes, Or wher þ children the debts & legacies
paide, shall haue a reasonable part of the goods
after the custome of the countrey.

Addicion.
B. liij.

¶

The.xlj .Chapter

If a man be outlawed of felony, or be attainted for murder or felonye, or that is an *ascismus* may be slaine by every stranger.

The.xli. Chapter.

It appereth in y^e said summe called *Summa Angelica* in the xxi. Chapter in y^e title of *Ascismus* y^e.ij. Paragraf, that he is an *Ascismus* that wil slay men for money at the instace of every mā y^e wil moue him to it, & such a mā may lawfully be slaine not onelye by y^e indge. but by everye priuate person. But it is saide there in y^e fourth Paragrafe, that he must first be indged by y^e law as an *Ascismus* or hee may be slayne or his goods seased. And it is saide farther ther in the.ij. Paragraf, that also in conscience suche an *Ascismus* may be slaine if it be dōe thzough a zeale of iustice & els not. Is not y^e law of y^e realme likewise of men outlawed, abtured, or indged for felonye?

A. In the law of the realme ther is no suche law y^e a man shalbee adjudged as an *Ascismus* ne if a man be in full purpose for a certain sūme of money y^e he hath receiued to slay a man, yet it is no felony, ne murther in y^e law till hee hath Done the act, for intent in felonye nor murther is not punishable by y^e common lawe of y^e realme though it be deadly sinne afoze God, but i treason or in some other particuler cases by statut y^e intent may be punished. And though a man in such case kill a mā for money: yet he shal not be attainted y^e he is an *Ascismus*. For as it is said before

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before there is no such terme of **Wilsimus** i the law of the realme but he shal in such case bee arraigned vpon the murther. And if he cōfesse it or pleade **þ** he is not guilty and is founde guilty by xij.men: he shal haue iudgement of life & of mē-ber, & shal forsaite hys landes and goodes. And like law is if in appeal brought of the murther he stande dumbe and will not aunswere to the murther, he shalbe attainted of the murther, & shal forsaite life, landes, & goods, but if he bee arraigned of **þ** murther vpon an indictment at the kings suit, & therupon standeth dumb and will not aunswer, there he shal not bee attainted of the murther, but he shall haue paine fort & dure (**þ** is to say) he shalbe pressed to death & he shall there forsaite his goods, & not his landes. But in none of these cases (**þ** is to say) though a mā bee outlawed for murther or felonye, or be abiured or **þ** he be otherwise attainted: yet it is not lawfull for any man to murther him or slay hym, ne to put him in execucion but by authoritie of the kings lawes. In so much **þ** if a mā be adiudged to haue paine fort & dure, and the officer beheadeth him, or on the cōtrarywise putteth him to paine fort & dure, where he should behead him, he offendeth the law.

And if an officer which hath authority to put a man to death maye not put him to death but according to **þ** iudgement) the me think it shold folow that moze stronger & straunger may not put such a mā to death of his owne aucthoritye wout commaundement of the law.

But if **þ** iudgement be that he shalbe hanged in

Stamp. 13. a.
24. H. 8. B. 2. h.
Coron. 196.
2. E. 3. 6. E. 1. 1.
Coron. 148.
2. 1. 1. 1.
2. 1. 1. 1.

Stamp. 13. a. 2.
35. H. 6. 58. B. 1.
Pole 100. 1. 1.
10. 1. 1. 1.
10. 1. 1. 1.
10. 1. 1. 1.

The.xlij. Chapter

In chaines, and the officer hangeth him in other things and not in chaines, I suppose he is not guilty of his death, but some say hee shall there make a fine to the king because he hath not followed the wordes of the iudgement.

Stanf. 13. a.

Also if a man that is no officer woulde arrest a man that is outlawed, abiured, or attainted of murder or felony as is aforesaid, & he disobeyeth the rest, & by reason of h disobedience he is slain I suppose the other shal not be empeched for his death, for it is lawful vnto every man to take such persons and to bring them forth h they may be ordered according to h law. But if a capias bee directed vnto h shiriefe to take a man in an accion of debt or trespass: ther no man may take h man but he haue auctoritie from h sherif. And if any man attempt of his own auctority to take him & he resisteth & in the resisting is slaine: hee h would haue taken him is guilty of his death.

¶ Addicion.

Whether a man shalbe bounden by the act or offence of his seruant or officer.

The.xliij. Chapter.

I N the saide summe called Summa angelica, in the title dominus. iij. Paragraf, is asked this questiō, whether a man shalbe charged for his household. And it is saide there that hee shall
when

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When the household offendeth in an office or ministrie that the master is the chiefe officer of, & he hath the worke & the profit of the household. For it shalbe his default y he would chose such seruants, for he ought to appoint honest persons but it is said there, y is to be vnderstand Ciuilly and not criminally, wherby as is sayde there he that is a gouernour is bounde for the offence of hys offycers, and that the same is to beholde of a capitaine, that he shali be bounde for the offence of his squiers. And an host for hys geste and such other. Neuertheles it is said ther that certaine doctours there reherfed, & therto that if the office be an open or a publike office, as an office of power or other lyke: It suffyseth to bring forth him that offended. But it is otherwise. If it be not a publike office, but an hoste or a tauerne or other like. But if the household offend not in y office, the lord is not bounde as to the law: but in conscience, he is bounde if he were in default by not correcting them for he is bound to correct them both by worde & example, and if he finde any incorrigible he is bound to put him away except y he hath psumptions that if he do so, he will bee the worse, and then hee maye doe that he thinketh best, and he is excused and els not. For to such persons it is sayd. Error qui nō resistitur: approbatur (y is to say) an error y is not resisted is approued. And though sinners of the sayinges before reherfed agree w y lawe of the realme, yet al do not so, & also they y do, are to be obserued by auctoritey of y law of y realme & not by y auctoritey aleged i y said paragraf

And

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And therefore I intend to treat somewhat wher
¶ master shalbe charged by hys seruant or de-
puty, or by them ¶ be vnder him in any offyce &
wher not, & then I intend to touche som other
things wher the master after the lawes of the
realme shalbe charged by the acte of his seruant
in other cases not concerning offices, and wher
not.

First if a man be committed to warde bypon
arrerages of accompt, and the keper of the pris-
on suffreth him to go at large: the an accion of
debt shal lie against him. And if hee bee not suf-
ficient, the it lieth against him ¶ committed the
prisoner vnto him, & ¶ is by reason of ¶ statut
of Westm the. ij. the. xi. chapter.

Also yf Bailieues of franchises that haue re-
turne of writs make a false return, ¶ party shal
haue auermēt against it as wel of to litle issues
as of other things as well as hee shall haue a-
gainst ¶ Sherife, but all the punishment shalbe
onely vpon the bailife & not vpon the lord of the
franchise, & that doth appere by the statut made
in the first yere of king Edward the. iij. ¶ firste
chapf. But if an vnder Sherife make a return
wherupon ¶ Sherif shalbe amerced, there the
high Shirife shalbee amerced for ¶ returne is
made expressly in his name. But if it be a false
returne wherupon an accion of disceit lieth, in ¶
case it may be brought against ¶ vnder Sherif
& see thereof the statute that is called Statutum
de male returnantibus breuia.

Also if the kinges butler make deputies hee
shall aunswere for his deputies as for himselfe

As

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As appeareth in the statut made in Ʒ. xxb. yere of king Edward the thirde. De pꝛodicionibus the .xxi. Chapter.

Also in the statut Ʒ is called Statutum scaccarij, it is enacted among other thinges that no officer of Ʒ eschequer shal put any clark vnder him but such as he wil answer for. And for as much as Ʒ statut is general: it seemeth that hee shal answer as wel for an vntrowth in any such clarke as for an oversight.

Also in the .xiiij. yere of king Edward Ʒ. iij. Ʒ ix. Chapter, it is enacted Ʒ all Gailes shalbe apoynted againe to the shieres, and Ʒ the Shyrife shal haue the keeping of them, and that the Shyrife shal make such vndergardeins for the which they wil answer. And neuerthelesse I suppose Ʒ if there be an escape by default of the Gailler, Ʒ the king may charge the Gailler if hee wil. But it is no doubt but hee may charge the Shyrife by reason of his statut if he will. But if it be a wilful escape in the Gailler which is felony in him, the Shyrife shal not be bound to answer to Ʒ felonye none other but the Gailler himselfe & they Ʒ assented to him.

Also if a man haue a shirifswike, constableness, or Bapliswike in fee, wherby he hath Ʒ keeping of prisoners, if he let any to repleuin Ʒ bee not repleuissable and therof be attaint, hee shall leese Ʒ office & c. And if it be an vndershyrif, constable, or Bailife Ʒ hath the keeping of the prisō that doth it without knowledge of the lord he shal haue i imprisonment by .iij. yeres, and after shal be raunomed at the Kinges will, as appeareth

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reth in the statut of westm̄ the first the.xv.chap-
ter. And so it appeareth & in this case he that is
the lord of the prison is not bounde to aunswer
for the offence of them that haue the rule of the
prison vnder him, but that they shal haue the pu-
nishment themselves for their misdeemeanour.

Also there is a statut made in the.xxviij.yere
of king Edward &.iij.the.xix.chapt, that is cal-
led the statute of the staple, wherby it is ordey-
ned & no marchant ne nons other man shall not
leese their goods for & trespass or forfalt of their
seruants, vnlesse it bee by cōmaundement of hys
master, or that hee offende in the office that hys
master hath put hym in, or els that the master
shal be bounde to an answer for the dede of hys
seruant by the law marchaunt, as in sōe place
it is bled.

Also it is enacted in the xiiij.yeare of Kyng
Edward the.iiij.the.viiij.Chapter that wapen-
takes and hundzedes that be leuered from the
counties shalbe adioined againe vnto them, and
that if the sherife holde them in his own hands
that he shal put in them such Bailifs that haue
lands sufficient, & for that which hee wyll aun-
swer, & that if he let them to ferme, that they be
let to the auncient ferme, but after it is prohibi-
ted by the statut of the.xxiij.yere of king Hērye
the.vi.the.x.Chapter. That no sherife shal let
his Bailiwikes nor wapentakes to ferme.

And when they be once in the Sherifes owne
handes and the sherifs putterh in Bailifs, they
be but as vnder bailifes to the kyng & the she-
rife the highe bailife & they in maner & sherifes
seruants

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seruantes & put in onely by him. And therefore by þe said statut of king Edward þe. iij. hee shall answer for them if they offend in their office, but if the sherife let them to serme: then though the sherife offend the statut in that doing: yet whether hee shall be charged for their misdemeanour in the effice or not, is a great doubt to some men, for they say þe this statut is onely to be vnderstand wher the bailiwikes be in the sherifs hands but here they be not so, ne the bailifes be not his seruantes but his fermours. And therefore they say that if the sherif shal be charged for the: It is by þe comon law & not by þe statut aforesaid.

Also in the. ij. yere of kinge Henrype the. vi. the xiiij. chapte, it is enacted þe officers by patent in euery court of the king that by vertue of their office haue power to make clarkes in the sayde courtes shal be charged & swozne to make suche clarks vnder the for whom they wil answer.

Also þe Hospitallers, & templers be phibit they shal holde no plee that belongeth to the kynges courtes vpon paine to yelde damages to þe pte greued & to make ransome to the kyng that the superiours shal answer for their obediences as for their owne dede, wher in the. ij. þe. xliij. chapte.

Also the sergeant of þe Catey shal satisfy al the debts, damages, & execucions that shal be recovered against any that is purueyour or achatoz vnder him and that offend against the statut of. xxxvi. of Ed. the. iij. or agaynst the statute of xiiij. of Henry the. vi. In case the purueyour or achatour be not sufficient &c. And the partye plaintife shal haue a scire facias against þe sayde sergeant

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sergeaunt in this case to haue execucion as appeareth in the .xxij. yeare of king Henry the .vi. the .i. Chapter.

Also if a man be sent to prison vpon a statute marchant by the Maior, befoze whom y^e recognisance was taken, & the Bayler wil not receiue him, he shal answer for the debt if he haue wherewith, and if not then he shal answer y^e committed the Bayler to him as appeareth in y^e statute called the statut marchant.

Also if outragious tolle be taken in y^e towne marchant, if it be the kings towne let to ferme, the king shal take the fraunchese of the market into his handes. And if it be done by the lord of the towne, the king shal do in likewise. And yf it be done by the Bailife vnknowing y^e lord, he shal yelde againe as much as hee hath taken, & shal haue imprisonment of .xl. dayes. And so it appeareth y^e the lord in this case shal not answer for his Bailife, witness y^e first y^e .xxx. chap^r. And in al the cases befoze rehearsed where the superior is charged by the default of him that is vnder him, hee in whose default his superior is so charged, is bounde in conscience to restore hym y^e is so charged through his default. Except the case befoze rehearsed of the hospitellers, for al that the obediencer hathe, is the superiours yf he wil take it. And therefore what recompence shalbee made by the obediencer in y^e case, is all at y^e will of y^e superior. And nowe I entende to shew thee some particuler cases, wher y^e master after y^e lawes of the realme shalbe charged by the act of his seruaunt, Bailife, or deputy, & where

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Where not, and so for to make an ende of this Chapter.

¶ Firſte for trespaſs of batery or ſwongeſull entre into landes or tenements: ne yet for Felony or murther, the maſter ſhal not be charged for his ſervant, unleſſe hee did it by his commaundement.

¶ Alſo if a ſervant borrowe money in hys maſters name, the maſter ſhall not bee charged wth it, unleſſe it come to his uſe, and that by his aſſent, and the ſame lawe is if the ſervant make a contract in his maſters name, the contrade ſhal not binde his maſter, vntill it were by his maſters commaundement, or y^f it came to the maſters uſe by his aſſent. But if a man ſende his ſervant to a faire or market to buye for him certaine thinges, though hee commaunde hym not to buy them of no man in certaine, and the ſervant doth accoꝝding, y^e maſter ſhal bee charged, but if the ſervant in that caſe buye them in his owne name not ſpeaking of his maſter, the maſter ſhal not bee charged vntill the thinges bought come to his uſe.

¶ Alſo if a man ſende his ſervant to the market with a thing which he knoweth to bee defective to be ſold to a certaine man, and hee ſelleth it to him: there an accion lieth againſt the maſter, but if the maſter biddeth hym not ſell it to any perſon in certaine, but generally to whome he can. And he ſelleth it accoꝝding, there lieth no action of diſceypt againſt the maſter.

¶ Alſo if the ſervant keepe the maſters ſpze negligently, whereby his maſters houſe is breet

S. j

and

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and his neighbours also, there an accion lieth against the maister. But if the seruant beare fire negligently in the streete, and thereby the house of an other is burned, ther lieth no accio against the maister.

Also if a man desire to lodge with one, that is no common hosteler, and one that is seruant to him that he lodgeth with, robbeth his chamber his mayster shal not bee charged for that robbing, but if he had bene a common hosteler, he should haue bene charged.

Also if a man be gardein of a prison wherein is a man y^e is condemned in a certain summe of money, and an other y^e is in prison for felony, and a seruant of the gardeine that hath the rule of the prison vnder him, wilfully letteth the both escape, in this case the gardeine shal answer for the debte, and shal paye a fine for the escape of the other, as for a negligent escape, & y^e seruant onely shalbe put to answer to the felony for the wilfull escape.

Also if a man make another his generall receiuoure, and that receiuoure receyueth money of a creditour of his maister, and maketh hym acquitance, & after payeth not his mayster, yet that paymente dischargeth the creditoure, but if the creditour had taken an acquitaunce of hym without paying him his money, that acquitaunce only were no bar to y^e maister, vnlesse he made him receiuour by writing, and gaue him auctoritie too make aquitances, and then the auctoritie must be shewed. And if the credytoure in such case by agreement betwene the receiuour and

and him, deliuered to the receiuer a horse or an other thing in recompence of the debt, that deliuey dischargeth not the creditour, vnlesse it be deliuered ouer vnto the maister, and hee agree to it. For the receiuer hath no suche power to make no such cōmutacion, but his maister geue him speciall commaundement thereto.

Also if a seruant shew a Creditoure of hys maister that his maister sent him for hys money and he payeth it vnto him, that paymēt dischargeth him not if the maister did not send him for it in dede, excepte that it come after vnto the vñe of the maister by his assent.

Also if a man make a bailye of a maner, and after the lord of whom y maner is holdē graūt the seignourie to another, and the bailife after paieth the rent to the grauntee, y paymēt of the rent countenaileth no attournemēt though it were by fine, ne shall not binde his mayster, till he attourne himselfe, but if the lord of whō the land is holden diseyled of the seignourye, & the bailife paieth the rente to the heyre of the lord, y is a good seasion to the heire, though the baylife had no cōmaundement of his maister to paie it. For it belongeth to his office to pay rēts seruice but not rent charge as some men saie.

Also an encrochement by the bailife shall not binde the maister in auowry, if he had no cōmaundement of the maister to pay it. Also if ther be lord, mesne, and tenant, & the tenaunte holdeth of the mesne as of his maner of D. the mesne maketh a bailife And after the tenaunt maketh a feoffement, y feoffe tēdeth notice to y baylife

The xliii. chapter.

and he accepteth his rent & the arrerages, this notice shal not bind the lord ne compell him to alter his auowzi, for the office of a balife streat cheth not thereto, but he must haue therein a special commaundement of his maister.

¶ Also if a seruaunt ride on his maisters horse to doe an errant for his maister into a Towne that hath aucthoritie to make attachementes of goodes vpon plaints of debt &c. and there vpon a plaint of debt made against the seruaunte, the maisters horse is attached by the officers thinking that the horse were his owne, and because the seruant appeareth not, the officers seale the horse as forfeit, in this case the lord shall haue an adion of trespass against the officers, & this attachement for y^e debt of his seruaunt shall not binde him &c. but that an host or keeper of a tauerne shalbe charged for their gestes vlesse it be done by their assent or commaundement. I do not remember y^e I haue reade it in y^e lawes of England.

¶ Addicion.

¶ Whether a villeine or a bond man may geue away his goodes.

The xliij. chapter.

¶ It appeareth in the said summe called Summa angelica in the title donacio prima the ixth Paragrafe, that a bonde man nor a religious man, nor a Monke, ne such other that hath nothinge in proper may not geue, but it bee by licence of their superioure, but that sayinge is not as it is sayde

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saide. there to be vnderstand of Religious parsons & haue lawfull ministraciō of goodes, for if they geue with a cause reasonable, it is good, but without cause they may not.

Also if they by & licence of the Byschoppe with the counsaile of the moze part of the couente abide at schole or go on pilgrimage: they may geue as other honest scholers and pilgrimes be reasonably wōt to do, and they may also geue almes where ther is great neede, if they haue no tyme to aske licence.

Also if they see one in extreme necessitie they may geue almes though their superiours prohibite them, for than all thinges be in commō by the law of god. And therfore they be boundē for to do it, as appeareth in & aforesaid summe called Summa angelica in the title Elemosina, & bi Paragrafe. Doth not the law of Englande agree with these dyuersities. **S.** For as much as the question is onely made whether a villain or a bond man maye geue a way his goodes or not. And it semeth that after the foresaid Summe, in & title which thou hast before rehearsed, that he ne none other that hath no propertie may not geue, whereby it appeareth that the said Summe taketh it, & a bonde man should haue no propertie in his goods, & & therfore his gitt should bee void. I shal somewhat touche what propertie and what auctoritie a villeine hath in his goodes after the lawe of the Realme, and what auctoritie the Lord hath ouer them. And I will leue the diuersities that thou hast remembred before of religious parsons

S. 14.

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sofies to them that liste to treate further therin hereafter.

Firste if a villayne haue goodes either by hys owne proper buyinge and sellpng, or otherwise by the gift of other men, he hath as perfitte a pertye, and also as whole interest in them, and may as lawfully geue the away as any free man maye. But if y^e lordes seale them befoze his gift: then they be y^e lordes, and the interest of y^e villayne therin is determined.

Also yf the Lorde seale parte of the goodes of his Villayne in the name of all, the goodes that the Villayne hath or shall hereafter haue that seasure is good, for all the goodes that hee hadde at that tyme, though he were not there present at y^e tyme of the seasure. But if goodes come to the Villayne after the seasure hee may lawfully geue them away notwithstandinge y^e saide seasure.

Also if the Lorde clayme all the goodes of the villain, and sealeth no part of them, that seasure is void, and the gift of the villaine is good notwithstanding that seasure.

Also if a manne be bounde to a villayne in an obligation in a certayne summe of moneys, and the lord seileth the obligation, than the obligation is his, but yet he can take no accion therupon but in the name of the villeine, and therefore if the villeine release the debt, the lord is barred by that release.

Also if a woman bee a nise, and she marieth a free man, y^e goodes immediatlye by the mariage be the husbandes, and the lord that come to late

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to make any seysure, and if the husbände in that case maketh his wife his executrix and dieth, & the wife taketh & same goods againe as executrix to her husbände, yet it shal not bee lawfull for the lord to take them from her, though she be a niefe as she was before the mariage.

Also if goodes bee geuen to a man to the vse of a villaine, and the lord seyseth those goodes & seysure after some men is good by the statute made in the xix yere of king Henry the seventh whereby it is enacted that the lord shall enter into landes wherof other persons be seised to the vse of his villaine, and they say & the same statute shalbe vnderstand by equite of goodes in vse, as well as of landes in vse.

Also if a villeine be made a prieste, yet nevertheless the lord may seise his goodes & landes as he might before. And vntill the seises he may alien them and geue them away as he might before he was priest. And in this case the lord may order him, so that he shal do him suche seruice as belongeth to a priest to doe before anye other, but he may not put him to no labour nor other busines but that is honest and lawfull for a priest to doe.

Also if a villeine enter into Religion in his yere of prooffe, he may dispose his goodes as he might haue done before he tooke & habite vpon him. And in likewise & lord may seise his goods as hee might haue done before, but if hee after make executors, & be professed. And the executors take the goodes to the perforraunce of the

S. liij.

The xliiii. chapter.

the will, than the lord may not lease the goods though the executors have them to the performance of the will of him that is his villedin, nor in that case the lord may not lease his bodye ne put him to no maner of labour, but muste suffer him to abide in his religion vnder the obedience of his superiour as other religious parsons do that be not bondemen: And the lord hath no remedy in that case for losse of his bondman, but onely to take an accion of trespass againste hym that receiued him into religion without hys licence, and thereupō to recover damages as shal be assessed by xij. men. Many other cases ther be concerning the gift of the goodes of a villedin wherefore I wil speake no more at this tyme, for this that I haue said suffiseth to shewe that the knowledge of the kings lawe is righte expediente to the good order of conscience concerning such goodes.

If a clarke be promoted to the title of his patrimony and after selleth his patrimony & after falleth to pouerty whether shal he haue his title therein or not.

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In the saide summe called Rosella in the tytle Clericus quartus, the xxiiij. article it is asked if a Clarke bee promoted to the title of hys patrimony, whether he may alien it at his pleasure, and whereither in that alienaciō & solempnitie needeth to bee kept & is to bee kept in alienacion

nacion of things of the churche, and it is answered there that it may not be aliened no moze than the goodes of a spirituall benefice if it bee accepted for a title, and expressely assigned vnto him, so that it should go as into a thing of the church, excepte hee haue after an other benefice wherof he may liue. But if it be secretly assigned to his title, some agree it may be aliened. & in this case by the lawes of the realme it maye be lawfully aliened whether it bee secretiue or openly assigned to his title, for the ordinarie ne yet þ party himselfe after the old customes of the realme haue no auctoritie to binde anye inheritance by auctoritie of the spirituall lawe, and therefore the land after it is assigned and accepted to his title, standeth in the same selfe case to be bought, sold, charged, or put in execution as it did before. And therefore it is somewhat to be maruailed that ordinaries will admit such land for a title, to the intent that he that is promoted should not fall to extreme pouerty, or go openly a begging, without knowinge howe the comon law will serue therein, for of meere right all inheritance within this Realme oughte to bee ordered by the kings lawes, & inheritance can not be bounden in this realme but by fine, or some other matter of record, or by feoffement or such other, or at least by a bargain that chaungeth an vse. And ouer that to assigne a state for terme of life to him that hath a fee simple before is boide in the lawes of Englande, without it be by such a matter that it worke by way of conclusion or estoppel, and in this case is no such

The xliiii. chapter.

suche maner of conclusion, and therfore al that
 is done in such case in assigninge of y^e said tytle
 is boide. Also there is no interest y^e a man hath
 in any maner landes oz tenementes for terme of
 life, for terme of yeres oz otherwile, but that
 he by the law of y^e realme may put away hys
 right therin if he will. And then when this man
 alieneth his lande generallye, it were againste
 the law of the Realme y^e any interest of such a
 title shoulde remaine in him againste hys owne
 sale, and ther is no diuersitie, whether y^e assigne
 ment of the title were open oz secrete, and so the
 title is boide to all intentes. And in likewise
 if a house of religion oz anye other spirituall
 man, y^e hathe graunted a title after the custome
 vlosed in such titles sell al the landes and goodes
 that they haue that sale in the lawes of Englad
 is good as against y^e title, & the buyer shall ne-
 uer be put to answere to the title. Also some
 say that vpon the common titles that be made
 daielye in suche case, that if hee fall to pouertye
 that hath the title, hee is without remedye, for
 they be so made that at y^e common lawe ther is
 no remedye for them, and if he take a sute in y^e
 spirituall court, many men say that a prohibicio
 oz a premonicio lieth. And therfore it were good
 for ordinaries in such case to counsaile wth them
 that be learned in the law of the realme to haue
 such a forme deuised for making of such tytles,
 that if neede bee, shoulde serue them y^e they bee
 made vnto, oz els let the bee promoted without
 any title, and to trust in God that if they serue
 him as they ought to do, he wil prouide for the
 to

to haue sufficient for them to liue by. And beside these cases & I haue remembred before there be many other cases put in the said summes for the well ordering of conscience, that as me thinketh are not to be observed in this realme neither in lawe nor in conscience.

D. Doest thou then think, & ther was default in them & drew the said summes and putther in such cases & such solucions & as thou thinkest hurt conscience, rather than to geue any light to it, specially as in this realme.

S. I thinke no defaulte in them, but I thinke & they were right well and charitably occupied to take so great paine and labour as they dyd therein for the wealth of the people and clearing of their conscience, for they haue thereby geue a right great light in conscience to all countreys where the lawe Civill and the lawe Canon be used to temporall thinges. But as for & lawes of this realme they knew the not be: they were not bound to know the, and if they had known the, it would little haue holpe the for & countreis that they most specially made their treatises for, and in this countrey also they be right necessarye and much profitable to all men for such doubts as rise in conscience in diuers other maners not concerning the lawe of the realme. And I marvelle greatly that none of the that in this Realme are most bounden to doe that in them is to kepe the people in a righte judgement, and in a clearenesse of conscience: haue done no more in time passed to haue the lawe of the realme known, than they haue done
for

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for though ignorance may sometime excuse yet the knowledge of the truth, and the true iudgement is much better, & sometime though ignorance excuseth in part, it excuseth not in all, & therefore me thinketh they did very wel if they would yet be callers on to haue that point reformed as shortly as they could. And now because thou hast well satisfied my minde in many of these questions that I haue made. I purpose for this time to make an ende. D. I pray thee yet shew mee or y thou make an ende more of these cases that after thine opinion be set in diuers bookes for clearing of conscience, that as thou thinkest for lacke of knowledge of y lawe of the realme, doe rather blinde conscience than geue a light vnto it, for if it be so, thā surely as thou hast said it would be reformed, for I thinke verely the lawes of the Realme in many cases must in this realme be obserued as well in conscience as in the iudicial courtes of the realme. S. I will with good will shew to thee shortly some other Questions that be made in the saide summe to geue thee, & other occasion to see therein the opinions of the said summes, and to see farther thereupon how the opinions and the lawes of the realme do agree together. And yet beside these questions that I intende to shewe vnto thee, there be many other questions in the saide summes that had as great nede to be more plainly declared according to the lawes of the realme as those that I shal shew thee hereafter or as I haue spoken of before, but to the cases y I shall speak of hereafter I wil shew the nothing

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thing of my conceipte in them, but will leue it to other that wil of charitis take soe further paine hereafter in that behalfe.

Diuers questions taken out by the Student of the summes, called Summa Rosella, and Summa Angelica, which he thinketh necessarie to bee looked vpon, & to be sene how they stand and agree with the law of the realme.

The xlv. chapter.



The first question is this, whether a custome may breake a lawe positue, Summa rosella, titulo cōsuetudo. Paragrafe. xij.

The seconde is if a man attaynted or banished be restored by the prince, whether shal that restitution streache to the goodes, Summa rosella in the title Dampnatus in principio.

Item if a man be outlawed of felony, abjured or attainted of murther or felony, or he that is an ascismus may be slaine by esttraungers & see like matter thereto, Summa angelica, in y title Ascismus Para. xi.

This question is somewhat answered to in a new addicion as appeareth befoze in the xlv. Chapter.

Item whether the maister shalbee bounde by the acte or offence of his seruaunt or officer **Sh**
ma

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ma angelica in the title dominus. Para. llii.

This question is answered to in a new addition, as appeareth before in the. xlii chapter.

Item whether a villayne may geue away his goodes, Summa Angelica, in the title donacio prima. Para. ix.

This question is answered to in a new addition, as appeareth before in the xliii chapter.

Item whether an Abbot may geue sc. Summa angelica, in the title donacio i. Para. x. & xxxix.

Item whether a woman couert may geue away any good, and it is answered, Summa angelica in the title donacio. i. Paragrafe xi. ¶ she may not, wout she haue goodes beside her dowry, but onely in almes.

Item if a man do treason whether his gift of goods after before attaindre be good, Summa angelica, in the title donacio i. Para. xij. and it seemeth ther nay, and looke Summa angelica in the title alienacio. Para. xxiiij.

Item if a man wittingely make a contracte betwene two kinsfolke, or other that maye not lawfully mary together, whether he hath forseit his goodes, Summa Angelica, in the title donacio i. Para. xiiij.

Item whether the father may geue to the sone Summa Angelica, in the title donacio. i. Para. xix and Summa rosella, in the title donacio. ij. Paragrafe xliij.

Item whether a man may geue aboue v. c. s. absque insinuacione Summa angelica, in y title donacio prima. Para. xx.

Item whether a giste shalbe auoyded by an
in

ingratitude, Summa rosella, in the title donacio i. Para. xviij. & xxix, and there it is said that the gift is void by the law of nature, & looks Summa Angelica, in the title donacio prima. Para xliij & xlv.

Item where any gift beetweene the husbände and the wife may be good, and it is said yea whē the husbände geueth it, causa remuneracionis, Summa rosella, in the title donacio. i. Paragrafe xxxij.

Item if a man make a swil and enter into religion, whether he may after reuoke the swyll & it is said, that Friers minours may not, and o-ther maye, Summa rosella, in the title donacio prima. Para, xxxv. in fine.

Item if a man geue another a towne with al the rightes that he hath in the same, whether y patronage &c. & the tithes passe, Summa rosella in the title ecclesia i. Para. lvi.

Item whether al that is bought with y money of the church be the churches. Summa rosella, in the title ecclesia i. Para. viij.

Item if a gift made to a monastery maye be avoided by that the geuer hath children after y gifte, Summa Angelica, in the title donacio. i. Para. xliij.

Item if a man buye a thing vnder the halfe price, whether he be bounde by the lawe to restore. &c. Summa rosella, in the title empicio & vendicio. Para. vi.

Item whether a common thiefe vel cōmunis depopulatoz agrozum may abiure, Summa rosella, in the title emunitas. ij. in principio. Et habes

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bet ibi in fine quod licet leges excipiant plures p
sonas tum p ius canonicum legib⁹ derogat est.

Item whether a man shal take the church for
great enornius offences that is not murther nor
felony. Summa Rosella, in the title Emunitas.
ij. Paragrafe iij. xi,

Item if a man take one in the high way and
draue him out and there beteth him, whether he
shal have punishment & is ordained for them &
stricke one in & high way. Summa Rosella, in
the title emunitas ii. Paragrafe. vi.

Item whether he & taketh the church maye
after for & offence be iudged to death. Summa ro-
sella, in the title Emunitas. ij. Paragrafe. viij.

Item whether the Bishops paleys be sanctu-
ary. Summa rosella, in the title Emunitas. ij.
Paragrafe. xliij.

Item whether the dignitie of the Bishop or
priesthood discharged bondage. Summa rosella
in the title Episcopus in principio.

Item whether a clerke is bound to pay anye
imposicions or tallages for his patrimony or o-
therwise, Summa rosella in the title excommu-
nicatio. i. diuisione octa Para. iij. and v. and vi.
and diuisione nona. Paragrafe. i.

Item if it were ordeined by statute that if a
man sell &c. he shal geue to the kinge ij. & whe-
ther a clarke be bound to geue it if he sell of his
prebend, Summa rosella in the title excommuni-
cacion i. diuisione nona. Para. iij.

Item if it bee ordained by statut that there
shal not be laied vpon a deade parson, but suche
a certaine clothe, or thus many tapers or can-
dels

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debe. whether the statut be good & it is left for a question. Summa rosella in the title excōmunicacio. i. diuisione. xviij. Para. viij. in fine.

Item if a man make a lease of a mill for term of yeares, & it is agreed & the lessee shal grind & lessour tolle free during & terme after & lessor is made a Erie or a Duke & hath greter household then before, whether & lessee be bound therto &c. Summa rosella in the title familia Para. v.

Item if a master wyl not paye his seruants wages & hath serued hym faithfully, whether & the servant may take secretly as much goods of & masters &c. and if he do whether he be bound to restitution. Summa rosella in the title familia Para. vi.

Item things inuincible of & Church may not be geuen. Summa rosella in & title of feodū. Paragraf. i. & see there in principio what feodum is

Item whether the sonnes bastardes and the sonnes lawfully begotten shal inherite together Summa rosella in the title filius Para. i.

Item whether father and mother maye succede to their bastardes. Summa rosella in & title filius Para. iiij.

Item whether the father may leaue any of his goods to his bastardes. Summa rosella in & title filius Paragraf. v. and Summa rosella in & title societas Para. xxij.

Item whether the offence of the father shall hurt the sonne in temporal things. Summa rosella in the title filius.

Item yf a manne geue all his landes and goods to his childzen, whether a bastarde shall
C. i. haue

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haue any part. *Summa rosella* in the title *filius* *Paragraf. xxij.*

Item to whom treasure found belongeth. *Summa rosella* in the title *furtum. Para. xi.*

Item if a deare or other wild beast that is so sore hurt y he may be taken, commeth into an other mans ground, whether it be his y oweth y ground or his that strake him. *Summa rosella* in the title *furtum. Para. xij.*

Item whether theft be in a litle thing as well as in a great thing, *Summa rosella* in the title *furtum. Para. xiiij.*

Item what paine a thief shal haue. *Summa rosella* in the title *furtum. Para. xxij.*

Item the goods of dead men go to the heires and that of damned men. *s. De terris, Summa rosella* in the title *hereditas. Pa. i.*

Item whether a man shalbe sayde guiltye of murther by commaundement, counsaill, or assent *Summa rosella* in the title *homicidium. ij. per totum*, and like matter is *homicidium. iij. in principio* and diuers other cases.

Item a man maketh a priue contracte with a woman & after hath a child by her: and after maryed another woman and hath a childe, shee not knowing of the first contract, whiche of the children shalbe his heir: *Summa rosella* in the title *Illegitimus. Pa. iij.*

Item whether the Pope may legitimate one to temporal things and to succede. *Summa rosella* in the title *Illegitimus. Pa. xvj.*

Item if goods be found that were left of the owner as forsake, who hath right to the. *Summa*

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ma rosella in the title inuenta. Para ij. And loke
summa rosella in y title furtum. Pa.xvñ. And
thus I make an ed of these questios, & because
thou desiredst mee in y. xxxi. Chap. to shew thee
somewhat where ignoraunce excuseth in the law
of the realme and wher not, I will answer soe
what to thy question & so comit thee to God.

¶ Wher ignoraunce of the lawe excuseth in the
lawes of England and wher not.

The.xlvi.Chapiter.

I Gnoraunce i y law though it be inuincible doth
not excuse as to the law but in few cases, for
euery mā is bound at his peril to take knowlege
what y law of y realme is, aswel the lawe made
by statut as y comō law, but ignoraunce of y dede
which may be called y ignoraunce of y truth of y
dede may excuse in many cases. D. I put case y
a stat penal be made & it is enacted y the statute
shalbe pclaimed before such a day in euery shire
& it is not pclaimed before y day, & after y day
a mā offendeth against y statut shal he rū in y pe
nalty. S. I thik ye, if ther be no farther words
in y statut to help him, y is to say, y if y pclama
cion be not made y no man shalbe bound by the
statut. & y cause is this, ther is no statut made i
this realme but by y assent of y lords spirituall
& tempozal & of al the comōs, y is to say by the
knights of y shiere citizens & Burgeses that be
cholen by assent of the commons, which in y par
liament represet the estate of the whole comōs

¶ ij.

And

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And every statut there made is of as strong effect in the lawe, as if al the commons were there present personally at the making therof, and like as there neded no proclamacion if al were there present in their owne parson, so the lawe presumeth, there needeth no proclamacion when it is made by their authoritie, & then when it is enacted that it shalbe proclaimed &c. that is but of favour of the makers of the statut and not of necessity, and it cannot therfore be taken that their intent was that it should be void if it were not proclaimed. Nevertheless some be of opinyon that if a man before the daye appointed for the proclamacion offend that statut & he should not in that case be punished, for they say & the intent of the makers of the statut shalbe taken to bee that none shold be punished before & day, which is a doubt to some other, but admit it be as they say that he shal bee excused, yet he is not excused by the ignoraunce of the law, but because & intent of the makers excused him. D. It is enacted in the vii. yere of king Richard the secōde &. vi. Chapter & every Sherife shall proclaim the statute of Wynchester thre times every yere in every market towne to the intent & offenders shall not be excused by ignoraunce, & it seemeth by those words that if no proclamaciō be made that the offender may be excused by ignoraunce S. Some take the entent of that statute to be that & people by that proclamacion should have knowledge of that statute of Winchester to the intent that the forfeiture therein may be taken as wel in conscience as in lawe, and some take the

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the statut to be of such effect as thou speakest of that is to say, that no forsaiture should growe vpon the statute of winchester against them & were ignoraunt but pclamation were made according to the saide statute of Richard. And if it be so taken & statut of winchester is of small effect against most part of the people, for certain it is that the said pclamation is not made, but admit it be as they say, then they & be ignoraunt be excused by the said particuler estatute specially made in that case & not by the general rules of the lawe, and sometime in diuers statutes penalles they that be ignoraunt be excused by & selfe statut as it is vpon the statute of Richard the.ij.the.xij.yere, the seconde statute and the last Chapter wher it is enacted that if any parson take a benefice by pvision & he shalbe banished the realme and forfeyte all his goods, and & if hee be in the realme, hee auoyde wythin. vi. weekes after he hath accepted it, and that none shall receiue him & is so banished after the saide vi. weekes vpon like forfeyture if he haue knowledge, and so he & hath no knowledge is excused by the expresse wordes of the statut. And in likewise hee & offendeth against Magna charta is not excōmenged but he haue knowledge that it is prohibite & he doth. For they be onely excōmenged by & sentence called (Sententia lata super cartas) & doth it wilfully or that doth it by ignoraunce, and correct not themselves within. x. daies after they haue warning. And some time they & bee ignoraunt of a statute bee excused fro & penalty of & statut because it shalbee

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taken that the intēt of the makers of the statut was & none shoulde be bound but they & haue knowlledge, but that any man shalbe discharged in the lawe by ignoraunce of the lawe onelye for & hee is ignoraunt I knowe fewe causes except it might be applied to infants that bee in their infancy and within yerres of discreciō, for if ignoraunce of the lawe should excuse in & lawe many offenders would pretend ignoraunce. D. Shal an infant & hath discrecion and knoweth good fro euil be punished by a penal statut & he is ignoraunt in. S. If the statute bee that for the offence hee should haue corporall pain, I think he shallbee excused and haue no corporall pain, but I suppose & that is not for & ignoraunce for though he knew the statut & wpyttingly offended, yet I think hee shall haue noe corporall paine, as where he pleaded iointenancy by dede & is found against him, or if he plead a record in assise & failleth of it at his daye, but & is because the lawe presumech & it was not thintent of the makers of the statute that he shoulde haue that punishment but if he be of yerres of discrecion to knowe good fro euil, whether he shal then forsaith & penolty of a penal statut it is moze doubt for it is cōmonly holden & if an infant had not ben excepted in the statut of foreiudgemēt, & the foreiudgement should haue bound him, & so shal his cesser and his leuyng of a crosse against the statut, or if he be a gardien of a prison & suffer a prisoner escape he shal pay & debt because & statutes be general, & if he should by the statuts be bound wth age like reaso wil & he may by a statut penal

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penal leese his goods. **D.** If an infant do a murder or a felony at such yeares as he hath discretion to know the law, shal he not haue y^e punishment of the lawe as one of full age. **S.** I thinke yes, but that is by an old maxime of the law for eschevinge of murders and felonies, and so it is of a trespas, but these cases rine not vpon the ground of ignoraunce, but with what act infants shalbe punishable or not puny shable for the tenderneffe of their age, though they bee not ignoraunt. **D.** Bee not yet knightes and noble wienne that are bounde mooste properly to set their study to actes of chivalry for defence of the realme, and husbandmen y^e must vse tillage & husbandy for the sustenance of y^e commonalty, and that may not by reason of their labour put themselves to know the law, discharged by ignoraunce of the law? **S.** Noe verely, for sith al were makers of the statute, the law presumeth that al haue knowledge of y^e that they make as it is saide before, and as they bee bound at their peril to take knowledge of the statute that they make: so be all them that come after them. And as for knights & other nobles of the realme, me seemeth y^e they should bee bound to take knowledge of y^e law as wel as any other in y^e realme except the y^e geue them self to y^e study & exercise of the law, & except spiritual iudges y^e i manye cases be bound to take knowledge of the lawe of y^e realme as is said before in. y^e xxv. chapt. For though they be bound to actes of chivalry for defence of y^e realme, yet they be bounden also to y^e actes of iustice, and that as it seemeth more the

C. liij.

other

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Other be by reaso of their great possessiōs & aue
thority. And for the wel orde rig of y tenāts, ser
nāts & neighbours, y many times haue nede of
their help, & also because they be oft called to be
of y kings counsel, & to the general counsaills of
y realme, wher their counsaill is right expedient
& necessary for the common welth, & therfore if
y noble men of this realme would see their chil
drē brought vp in such maner y they shold haue
lerning & knowledg moze thē they haue cōmō
ly vsed to haue i time past, specially of y groundes
& principles of y law of y realme, wher i they be
inherit though they had not y high cunning of y
whole body of y law, but after such manner as
master Fortescu i his boke y he intituleth y boke
(de laudib⁹ legum anglie)aduertiseh y pzince
to haue knowledg of the laws of this realme,
I suppose it would be a great help hereafter to
y ministracion of iustice in this realme, A great
suerty for themself & a right great gladnes to al
the people, for certain it is, the moze part of the
people would moze gladly here that their rulers
& gouernours entented to orde the wisedōe
& iustice, thē w power & great retinues, But ig
nozāce of y dede many times excuseh i y laws
of Englād. & I shal shortly touch sōe cases ther
of to shew wher it shal excuse & wher it shal not
excuse, & thē the reader may adde to it after hys
pleasure and as he shal think to be conuenient.

Certain cases & grounds where ignorance of
the dede excuseh in the laws of Eng
lande, and where not.

The

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If a mā buy a hōrse in open market of hym & in right hath no property in him, not knowyng but that he hath right he hath good title & right to the hōrse and the ignoraunce shal excuse him. But if he had bought him out of that open market, or if he had knowē & the seller had no right the buying in open market had not excused him. Also if a man retaine another mans seruant not knowing that he is retained wth him, & ignoraunce excuseth him both for the offence that was at & common lawe against the maxime & prohibited such retaining of another mā's seruāt. And also against the statut of xxxij. of Edward & thirde, wherby it is prohibit vpon pain of emprysōmēt that none shal retain no seruant that departeth wthin his terme without licēce or reasonable cause, for it hath been alway taken & the intent of the makers of the saide statut was, that they that were ignoraunt of the first retēinour shold not runne in any penaltie of the statute. And & same lawe is of him that retēmeth one that ys warde to another, not knowyng that he is hys warde. And if homage be due and the tenant after that the homage is due maketh a feoffemēt, & after the lord not knowyng of the feoffement distraineth for the homage in that case that ignoraunce shal excuse him of damages in a Repleuin though he cannot auow for the homage, but if he had knowen of the feoffement, hee shoulde haue yelded damages for the wrongful taking. Also if a man be bound in an obligacion that he shall

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shall repaire the houses of him that he is bound to by such a certaine time as oft as nede shal require, & after þ houses haue nede to be repaired but he that is bounde knoweth it not, that ignorance shall not excuse him for hee hath bounde himself to it, & so he must take knowlege at his perill, but if the condicion had been þ he should repaire such houses as he to whō hee was bound should assign, and after he assigneth certain houses to be repaired, but hee þ is bounde hath noe knowledge of that assignement, that ignorance shal excuse him in the law, for he hath not bound himselfe to no reparacion in certain, but to such as the party wil assigne, and if hee none assigne he is bound to none, & therfore sith he þ should make the assignement is priuy to the dede, he is bound to geue notice of his owne assignement, but yf the assignement had been appointed to a straunger then the oblygoure muste haue taken knowledge of the assignement at his peril. Also if a man buy lāds wherunto another hath title whiche the buyer knoweth not, þ ignorance excuseth him not in the law no more then it dothe of goods. Also if a seruant come with his masters horse to a towne þ by custome may attache goods for debt, & vpon a plaint against the seruant, an officer of the towne, by infozmaciō of the party attacheth the masters horse thinking that it were the seruants horse, that ignorance excuseth him not, for when a manne will do an acte as to enter into lande, lease goodes, take a distresse or suche other, he muste by the lawe at his perill see that that hee doothe bee lawfullye done

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done as in that case before rehearsed. And i like
 wise if a sherif by a repleui deliver other beasts
 then weare distrained, though the partye y^e dys-
 trained shewed him they were the same beasts
 yet an accion of trespass lieth against him, & igno-
 rance shal not excuse him, for he shalbe cōpelled
 by the law as al officers commonly be to execute
 the kings writ at his peril according to the te-
 nour of it, and to see y^e the acte that he doth be-
 lawfully done. But otherwise it is after sōe mē
 if vppon a summons in a pzeipe quod reddat y^e
 sherif by informacion of the demaūdaunt somo-
 neth the tenant in another mans lands thiking
 it for the tenants land, ther they say he shal be
 excused, for in y^e case he doth not lease the lande
 ne take possession in the land, but onely doth so-
 mon the tenant vpon the land, & y^e writ cōmaū-
 deth him not y^e he shal somon the tenant vppon
 his owne land, but generally y^e hee shal somon
 hym and nameth not in what lande and then by
 an old maxime in the law it is taken y^e hee shal
 somon him vpon the land in demaunde, & there-
 fore though he mistake the land and be ignorant
 of it, yet if the demaūdaunt enforce him that
 y^e is the land that hee demaūdeth that sufficeth
 to the sherif as to his entre for the summoning
 as they say, though it be not y^e tenants. And here
 I make an end of these questions for this tyme
 D. I pray thee yet or we depart take a litt^r more
 paine at my desire.

S. What is that. D. That thou wouldest
 shew me thy mind in diuers cases of the law of
 y^e realm, which as me semeth shal not so clerely
 wyth

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with conscience as they should do. And therfoze
I wold gladly here thy cōcept therē how they
may stand with conscience. S. But the ca-
ses and I shall with good will say as I thinke
to them.

Addicion.

The first question of y^e Doctour. How the
law of England may be said reasonable y^e
prohibiteth them y^e be arraigned vpon
an endictement of felony oz murther
to haue counsaile.

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ME thinketh y^e law in y^e point is very good
& indifferent taking the law therein as it is,
D. Why what is the law in this point. S. The
law is as thou saist that he shal haue no counsaile
but the law is farther, that in al things y^e par-
tain to the orde of pleading, y^e iudges shal so in-
struct him and so orde him that he shal renne in
to no leopardy by his mispleadinge, as if he wil
pleade that he neuer knew the mā y^e was slaine
oz y^e he neuer had a peny woorth of the goods
y^e is supposed that hee should steale, in these ca-
ses y^e iudges are bound in conscience to enforme
him y^e he must take the general issue and pleade
y^e he is not guilty, for though he be set to bee
indifferent betwene the king and y^e party as to
the party as to the principal matter as they bee

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in all other matters, yet they bee set in this case to see & the party take no hurt in fourme of pleading in such matters as he shal shewe to bee the trueth of & matter, and & is a great fauour of & law for in appelle though & Iustices of fauour wyll moste commonlye helpe for the party and sometime his counsaile also in the fourme of pleadynge as they do also many times in common plees, yet they myghte in the cases if they would byd the partye and his counsaile pleade at their perill. But they maye not do so wyth conscience wypon enditmentes as mee seemeth, for it were a great vnrasonableness in the lawe if it should prohibite him & standeth in leoparde of his lyfe that he shoulde haue no counsaile and then to dzyue him to pleade after the strait rules and formalities of the law & he knoweth not. **D.** But what if hee bee knowen for a common offender, or & the iudges know by examination or by an euident presumption & he is guiltye and he asketh Sentuary, or pleadeth misnomer or hath some recorde to pleade & he cannot plead after the fourme: May not & Iudges in suche cases byd hym pleade at his perill. **S.** I suppose & they may not, for though hee bee a common offender or & he be guilty, yet he ought to haue that the law geueth him, and & he shall haue & effect of his plees & of his matters entred after & forme of & law, & also sometime a mā by examinaciō & by witness may appere guilty & is not. And in likewise ther may be a vehement suspiciō & he is guilty & yet he is not guilty, & therefore for such suspiciōs or vehement psumpciōs me thinketh

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thinketh a mā may not & cōsciēce be put fro & he ought to haue by & law: ne yet althoughe the iudges knew it of their own knowlege. But yf it were in appeale I suppose & y iudges myght do therein as they shold thik best to be done in cōscience, for ther is no law that bindeth thē to instruct him, but as they do cōmonlye the parties of fauour in all other cases but they may if they wil byd them pleade at their perill by aduise of their counsaile, & if the appeale be pooze & haue no counsaile, the court must assigne him counsel if he aske it as they must do in al other places, & & me thinketh they are bounde to doe in conscience though & appele were neuer so great an offender, and though the Iudges knew neuer so certainly & he were guilty, for the lawe bindeth thē to do it. And so me thynketh & ther is great diuersity betwene an idictmēt & an appele. And the reason why the law prohibiteth not counsel in appele as it doth in an indictment, I suppose is this. There is noe appeale brought but & of common presumption the appellant hath great malice agāst the appeale. And when the appele is brought by & wife of the death of her husband or by the sonne of the death of his father, or that an appeale of robbery is brought for stealing of goods. And therfore if the iudges should i those cases shew themself to instruct the appelles, the appellaunts would grutche and think them parcial, and therfore as well for the indemnity of the court, as of the appeale in case & hee bee not guilty, the law suffreth the appele to haue counsel but when that a man is indicted at the Kynges

Suite

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suit the king intendeth nothing but iustice with fauor & y^e is to the rest and quietnes of his faithfull subiects, & to pulaway misdoers among the charitably, & therfore he wil be contented y^e his iustices shal help forth the offenders accordig to the trouth as far as reason & iustice may suffer And as the king wil be contented therin: it is to presume y^e the counfel wil be contented. And so there is no daunger thereby neither to the court ne to the party, & as I suppose for this reasoⁿ it began y^e they should haue no counsaile bypon indictments, and y^e hath so long continued that it is now growen into a custome & into a maxime of the law that they shall none haue. D.
But if y^e iudges know of their owne knowlege y^e the indicter is guilty, and then he pleadeth misnomer or a reco^rde that he was auterfoits arraigned & acquite of y^e same murther or felony, & the iudges of their owne knowledge know y^e the plee is vnt^rue, may they not the bidde hym plead at his perill. S. I think yes, but yf they know of their owne knowledge y^e he were guilty of the murther or felony, but that the plee was vnt^rue they knew not but by coⁿiecture or info^rmacion, I thinke they might not then bid hym plead at his perill.

The seconde question of the Docto^r whether warrant^y of the yonger brother y^e is taken as heire because it is not knowen but y^e the eldest brother is dead, be in conscience a bar vnto y^e elder brother as is in the law.

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The.xlix. Chapter

A Man seyled of landes in fee hath issue twoe sonnes, the eldest sonne goeth beyond y^e Sea and because a common voice is that he is dead the yonger brother is taken for heire, the father dieth the yonger brother entreth as heire and alpeneth the lande with a warrant, and dieth without any heire of his body, and after y^e elder brother cometh againe and claimeth the land as heire to hys father, whether shall he bee barred by that warraunty in conscience as is in the lawe.

S. It is a maxime in the lawe that the eldest brother shal in y^e case be barred. And that maxime is taken to be of as strong effect in the law as if it were ordeined by statute to be a barre. And it is as olde a law y^e such a warrant shal barre the heire: as it is that the inherytaunce of the father shall onely descend to the eldest sone. And such the law so is why should not then conscience folow the law as wel as it doth in that point that the eldest sonne shal haue the lande.

D. For there appeareth no reasonable cause wherupon the maxime might haue a lawful beginning, for what reason is it that the warrantie of an auncester that hath no ryghte to lande that should barre him that hath right. And yf yt were ordeined by statut that one man shoulde haue another mannes lande and no cause is expressed why he should haue it, in y^e case though he might hold the lande by force of that statut, yet he could not hold it in conscience without there
were

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were a cause why he should haue it, & these cases be not like as me semeth to the forfeiture of goodes by an outlawrye, for I wil agree for this time that that forfeiture standeth with conscience, because it is ordained for ministracion of iustice, but I cannot perceiue anye suche cause here: and therfore me thinketh & this case is like to the maxime & was at the common law of wreke of the sea, that is to say, that if a mans goodes had bene wrecked vpon the sea, that & goodes should haue bene immediatlye forfeited to the kinge. And it is holden by all doctours that that law is againste conscience, except certayne cases that were to long to rehearse now. And it was ordeined by the statut at Westminster & first, that if a Dogge or Catte come aliue to the lande, that the owner if he proue & goods within a yere and a day to be his shal haue the, whereby the said lawe of wrekes of the sea, is made more sufferable than it was before, & some thinketh in this case that this warranty is no barre in conscience, though it be a barre in the law. S. I pray the kepe that case of wreke of the sea in thy remembraunce, and put it hereafter, as one of thy questions and therupon shewe me thy farther minde therein, and I shall with good will shew thee my mind, & as to this case & we be in now, me thinketh the maxime whereby & warranty shal bee a barre is good & reasonable, for it semeth not againste reason & a man shal be bounde as to temporal thinges by the acte of his auncestor to whom hee is heire for like as by the lawe it is ordained that hee

U. j

shall

The xlix. chapter.

shal haue aduantage by the same auncester, & haue al his landes by discēt if he haue any right so it semeth that it is not vreasonable thoughe the law for the priuity of bloud that is betwene them suffer him to haue a disauantage by the same auncester, but if the maxime were y if any of his auncesters thoughe he were not heyre to him made such a warranty, that it shoulde be a barre, I thinke that maxime were against cōscience, for in that case there were no ground nor consideracion to proue howe the sayde maxime shoulde haue a lawfull beginninge, wherefoze it were to be taken as a maxime against the law of reasō, but me thinketh it is otherwise in this case, for the reason that I haue made before. D If the father binde him and his heires to the payment of a debt and dye, in that case the sonne shal not be bounde to pay the debt, vnlesse hee haue asses by discent from his father. And so I would agree that if this man haue asses by discent from the auncester that made y warranty: that he shoulde haue bene barred, but els me thinketh it shoulde stande hardly with cōscience that it shoulde be a barre. S. In that case of the obligacion, the law is as thou saiest, and the cause is for that the maxime of the law in that case is none other but y he shalbe charged if he haue asses by discēt, but if the maxime had bene generall that the heire shoulde bee bounden in that case without anye asses, or if it were ordeined by statute that it shoulde be so, I thinke that bothe the maxime and the statute shoulde wel stande with conscience. And like
lawe

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lawe, is where a man is bouchēd as heire, hee may ēter as he that hath nothing by discent, but where he claimeth the lande in his owne right therz the warranty of his auncestre shall bee a barre to him though he haue no asses fro y^e same auncestre, and though it be saide in Ezechiel the xviij. chapter. That the sonne shal not beare the wickednes of the father, that is vnderstand spiritually. But as to tempozal goodes the opinion of doctoures is, that the sonne sometime may beare the offence of his father. D.

Nowe that I haue heard thy mynde in this
case, I will take aduise ment therein till a better
leasure. And will now procede to another que-
stion. S. I pray thee do as thou saist, and I
shall with good will make aũswere thereto as
wel as I can.

The thirde question of the doctour, if a man procure a collaterall warrāty, to extind a right that he knoweth another man hath to land, whether it be a barre in cōscience as it is in the law or not.

The 1. chapter

A Man is disseysed of certaine lande, the disseisour selleth the lande. &c. the alyene knowinge of the disseison obtaineth a release with a warrantye of an auncester collateral to the disseysye, that knoweth also the ryghte of the disseisie. That auncester collateral dyeth, after whose deathe the warrantye dyscendeth vppon the dysseysie, whether maye the alyene in that case holde the lande in consy-
ence

The 1. chapter.

ence as he may by the law. **S.** With the warrā
tye is descended vpon him wherby he is barred
in the law, me thinketh that he shal also be bar-
red in cōscience, and y this case is like to y case
in the next chapter befoze, wherein I haue saide
that as mee thinketh it is a barre in conscience.

D. Though it might be taken for a barre in
conscience in that case, yet mee thinketh in thys
case it can not, for in that case the yōger bzothe
ētrede as heire knowing none other but that he
was heire of right, & after whan he sold y lande
the buyer knew not but that he that sold it had
good right to sel it, and so he was ignozaunt of
the title of the eldest bzothe, and that ignozaunce
came by the default and absence of himselfe that
was the eldest bzothe. But in this case as wel
the buyer as he that made the collateral warrā
ty, knew the right of the disseise & did that they
could to extincite the righte, and so they did as
they would not should haue bedone to thē, and
so it semeth that he that hath the land may not
with conscience kepe it.

S. Though it be as thou saist y all they offen-
ded in optaining of the saide collateral warran-
tie, yet such offence is not to be considered in y
law, but it be in very speciall cases for if such a
legiance should be accepted in the law, releases
& other wzitings should be of small effect, and
vppon euery light surmise al wzitinges mighte
come in trial whether they were made with cō-
science oz not. Therefore to auoide that incon-
uenience the law will dziue the partye to aun-
swere onely whether it be his deede oz not, and
not

not whether the dede were made with cōscience
or against conscience, and though the party
may be at a mischief thereby, yet the law wyll
rather suffer the mischief thā & said inconueni-
ēce. And like law is if a womā couert for dread
of her husbāde by compulsion of him leaue a
fine, yet the woman after her husbādes death
shal not be admitted to shew & matter in auoidīg
of & fine for thincōuenience & might folow ther
vpon. And after the opinion of many men ther
is no remedye in these cases in the Chauncerye
for they say that wher & cōmon law in cases cō-
cerning inheritaunce putteth the party fro anye
auerment for escheewing of an inconuenience &
might folow of it amonge the people, that if the
same inconuenience should folow in the Chaun-
cery if the same matter should be pleaded ther
that no sub pena should lye in such cases, & so it
is in & cases before rehearsed. For as much vexa-
cion, delay, costes, and expenses might growe to
the party if he should be put to a ſwore to such
auermentes in the chauncerye as hee were put
to a ſwore to them at the common law, and
therefore they thinke that no sub pena lyeth in &
saide cases ne in other like vnto them. Neuer-
theles I do not take it that their opinion is &
he that bought the land in this case may wyth
good conscience holde the land, because hee shal
not be compelled by no law to restore it, but &
hee is in conscience and by the lawe of reason
bounde to restore it, or otherwise to recom-
pence the party so as hee shal bee contented, &
I suppose verelye it is so if hee will kepe his

The li.chapter.

coule ent of peril and daunger. And after some men to these cases may be resembled the case of a fine with none claime that is remēbzed befoze in the xiiij. Chapter of this booke, where a man knowing another to haue right to certain land causeth a fine to be leuied therof with proclamation and the other suffereth fine yeres to passe without claime, in that case he hath no remedye neither by common lawe, nor by sub pena, and that yet he & leuied the fine, is bound to restore & land in conscience. And me thinketh I could right wel agree that it should be so in this case, & that specially, because & pty himself knoweth perfectly that the said collateral warrātpe was obtained by couin and against conscience.

The fourth question of the Doctour
is of wrecke of the Sea.

The li.chapter.

I pray thee let me now heare thy minde howe the law of England concerning goodes that be wrecked vpon the sea may stande with conscience, for I am in great doubt of it. **S.** I pray thee let me first heare thine opinion what thou thinkest therein. **D.** The statute of westminster the first that speaketh of wrekkes is, & if any man, dogge or catte, come aliue to & land out of the ship or barge, that it shal not bee iudged for wrecke, so that if the partye to whom the goodes belonge come within a yere & a day and proue them to be his, that he shal haue the or els that they shal remaine to the kinge. And me thinketh that the sayde statute standeth not
with the

with conscience, for there is no lawefull cause why the party ought to forfeit his goodes ne þ the king or lordes ought to haue the, for there is no cause of forfeiture in the party, but rather a cause of sorrow & heauines. And so that law seemeth to adde sorrow vpon sorrow. And therfore doctours holde commonly that hee that hath such goodes is bound to restitution, and that no custome may helpe, for they say it is against the commaundement of God, *Leui xix.* wher it is commaunded that a man should loue his neighbour as hymselfe, and that they say he doth not that taketh away his neighboures goodes, but they agree that if any man haue cost and labour for the sauinge of suche goodes wrecked, specially for such goodes as would perish if they lay styll in the water, as Sugar, Paper, Salt, Mele, & such other, that he ought to be allowed for hys costes and labour, but he must restore the goods except hee could not saue them withoute putting his life in ieopardy for them, and than if he put his life in such ieopardy and the owner by common presumption had had no waye to haue saued them, thā it is most commonly holden that he may kepe the goodes in conscience, but of other goodes that would not so lightly peryshe, but that the owner might of common presumption saue them himself, or that mighte bee saued without any perill of life, the takers of them be bounde to restitution to the owner, whether he come within the yere or after the yere.

And me thinketh this case is somewhat lyke to a case that I shal put, if there were a law

The li. chapter.

and a custome in this realme or if it were ordeined by statut that if any alien came throughth the Realme in pilgrimage & died, that al his goods should be forfeit, that law should be against conscience, for there is no cause reasonable why the saide goodes shoulde be forfeite. And no more me thinketh there is of wrecke. **S.** There be diuers cases where a man shal lese his goods and no default in him, as where beastes straye away fro a man and they be taken by and proclaimed and the owner hath not hearde of them within the yere and the day, though hee made sufficient diligence to haue heard of them, yet the goodes be forfeit and no default in him, and so it is where a man killeth another with the sword of J. at stile the sword shalbe forfeit as a dead dand, & yet no default is in the owner, & so mee thinketh it may be in this case, and that sithe the common law befoze the said statute was the goodes wrecked vpon the sea shal be forfeit to the king that they be also forfeit now after the statut, except they be saued by folowing the statut, for the law must needes reduce the property of all goodes to some man, & whan the goodes be wrecked it semeth the property is in no man but admitte that the property remaine stil in the owner, than if the owner parcase would neuer clayme, than it shoulde not be knownen who ought to take them: and so mighte they be destroyed and no profyte come of them, wherefore me thinketh it reasonable that the law shal appoint who ought to haue them, & that hath the law appointed to the king as souereigne & head
suer

ouer the people. **D.** In the cases that thou hast put befoze of the straye and deodand, ther be consideracions why they be forfeit, but it is not so here, and me thinketh that in this case it were not vnreasonable that the law should suffer any man that would take the to take & kepe them to the vse of the owner, sauing his reasonable expēses, and this me thinketh were moze reasonable law than to pul the property out of the owner without cause. But if a man in the sea cast his goods out of the shippe as forsaken there doctoures holde that euery man may take them lawfully that wil, but otherwise it is as they say if hee throswe them out for seare & they should ouercharge the ship.

S. There is no such lawe in this Realme of goodes forsaken, for though he a man wepue the possession of his goods and seith hee forsakethe them, yet by the law of the realme the property remaineth stil in hym, and he maye lease them after whan he will, and if any man in the meane tyme put the goodes in saufe garde to the vse of the owner. I thinke he both lawfullpe and that he shalbe allowed for his reasonable expēses in that behalfe as hee shall bee of goodes founde, but hee shall haue no property in them no more than in goodes founde. And I would agree that if a man prescribe that if he find anye goodes within his maner that he shoulde haue them as his owne, that & prescription wer= boide, for there is no consideracion how & pre= scription mighte haue a lawful beginnige, but in this case me thinketh ther is. **D.** What is &?

S.

The lii. chapter.

S. It is this. The kinge by the olde custome of the realme, as lord of the narrow sea, is bound as it is said to scoure the sea of the pirates & petit robbers of the sea. And so it is reade of y noble king saint Edgare, that he would twise in the yere scoure the sea of suche pirates, but I meane not therby that the king is bounde to conduct his marchants vpon the sea against al outwarde enemies, but that he is bound onelye to put away such pyzates and petit robbers.

And because y can not be done without greate charge, it is not vnreasonable if he haue suche goodes as be wrecked vpon the sea toward the charge. **D.** Upon that reason I will take a respite til an other time.

The v. question of the Doctoure whether it stand with conscience to prohibite a Jury of meate and drinke til they be agreed.

The liij. chapter.

If one of the xij. men of an enquest knowe the very trowth of his owne knowledge, and instructeth his felowes therof, and they wil in no wise geue credence to him, & thereupon because meate and drinke is prohibited them, he is driue to the point that either he must assent to them, and geue their verdict against his owne knowledge, and against his owne conscience, or dye for lacke of meate, how may the law the stand with conscience that will driue an innocente to that extremity, to be either forsworne or to be famished and dye for lacke of meat. **S.** I take not the law of y realme to be y y Jury after they be

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he sworne may not eate nor drinke till they bee
 agreed of the verdict, but trowth it is there is a
 Maxime, and an olde custome in the lawe, that
 they shall not eate nor drinke after they bee
 sworne till they haue geuen their verdict with
 out the assent and licence of the Justice, & y^e is
 ordeined by the lawe for eschewing of diuers in=
 conueniences that might folow thereupon, and
 that specialy if they should eate or drinke at the
 costes of the parties, and therefore if they doe y^e
 contrary, it may be layed in a rest of the iudge=
 ment, but with the assent of the Justices, they
 maye both eate and drinke, as if any of the Ju=
 rours fall sicke befoze they be agreed of theyre
 verdict so soze that he may not comon of y^e ver=
 dit, than by that assent of y^e iustices he may haue
 meate and drinke and also such other things as
 bee necessarye for him and his fellows also at
 their owne costes, or at the indifferent costes
 of the parties if they so agree, or by the assent of
 the iustices may both eate and drinke, and ther=
 for if the cause happen that thou now speakest
 of, and that the iury can in no wise agree in their
 verdict, and that appeareth to the Justices by ex=
 aminacion: the iustices maye in that case suffer
 them haue bothe meate and drinke for a tyme
 to see whether they will agree, and if they will
 in no wise agree: I thinke y^e the iustices maye
 set such order in y^e matter as shal seme to the by
 their discrecion to stand wth reason & conscience by a
 warding of a new enquest & by setting fine vpon
 the that they shal finde in default or other wise:
 as they shal thinke best by their discrecion like
as

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as they may do if one of the iury die before ver
dit, or if any other like casualties fall in þe behalf
But what the iustices ought to do in this case
þe thou hast put by their discrecion: I will not
treate of at this time.

¶ The vi. questions of the doctour whether the
coloures that be geuen at the commō law in
assises, accions of trespass, and diuers o-
ther accions stande with cōscience
because they be most cōmely
feined and be not true.

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I pray thes let me here thy minde to what in-
tent such coloures be geuen, and sithe they bee
commonly vntrue: how they may stande with
conscience. **S.** The cause why suche coloures
be geuen in this, there is a maxime & a ground
of the law of England, that if the defendante
or tenant in any accion plede a ple that amon-
teth to the general issue þe he shalbe compelled to
take the general issue, and if he wil not, he shall
be condemned for lacke of aunswere, & the ge-
neral issue in assise is, that he that is named the
disseisour hath done no wronge nor no diseyson.
And in a writ of entre in the nature of assise the
general issue is that he disseised hym not, and
in an accion of trespass that he is not gyltye and
so enery accion hathe his generall issue assigned
by the law, and the tenant must of necessite ei-
ther take þe general issue, or plede some ple in a-
batement of the writ to the iurisdiction, to þe p-
son or els some barre or some matter by way of
conclusion, And therfore if Ihon at stile infeſe
Henry

Henry Hart of land and a stranger bringeth an assise against y^e said Henry Harte for that lande whose title he knoweth not. In thys case if he should be compelled to pleade to the pointe of y^e assise, that is to saie, that he hath done no w^orge ne no disseason, the matter shoulde be put in the mouthes of xij. lay mē whiche be not learned in the law, and therfore better it is that the law be so ordered that it be put in the determinaciō of the iudges than of lay men. And if the saide Henry Hart in the case befoze rehearsed would plede in barre of the assise that Thon at stile was seyled & enfeoffed him, by force wher of hee entred and asked iudgement if that assise should lye against him, that plee were not good for it amounteth but to the general issue, & therfore he shalbe compelled to take the general issue or els the assise shalbe warded against him for lacke of answer. And therfore to the intente the matter may be shewed and pleaded befoze y^e iudges rather thā befoze the Jury, the tenants ble to geue the plaintife a colour, that is to saie a colour of accion wherby it shal appere that it were hurtful to the tenaunt to put that matter that he pleadeth to y^e iudgement of xij. men, and the most common colour that is v^used in suche case is this, whan he hath pleded that such a mā enfeoffed him as befoze appeareth, it is v^used that he shal p^lcade farther and saie that the pleintyfe claimig by a colour of a dede of feoffemēt made by the said feoffour befoze the feoffement made to him, wher notright passed by the dede entred vpon whom he entred and asked iudgement if
the

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the assise lye against him. In this case because it appeareth to be a doubt to vnlearned mē whether the land passe by the deede without luerie or not, therefore the law suffereth the tenant to haue that speciall matter to bring the matter to the determinacion of the iudges. And in suche case the Iudges may not put the tenant fro the plee, for they knew not as Iudges, but that it is true, and so if any default be, it is in y^e tenāt and not in the court. And though the trouthe be that there were no suche deede of feoffement made to the plaintife as the tenaunte pleadeth, yet me thinketh ther is no default in the tenāt, for he doth it to a good intent as before appeareth. D. If the tenant know that the feoffour made no suche deede of feoffement to the plaintife, than there is a defaulte in the tenaunte to plede it, for he wittingly saith against y^e trouthe and it is holden by all doctours that euery lye is an offence more or lesse, for if it be of malice, and to the hurte of his neighbour, than it is called (*Mendacium perniciosum*) and that is deadly sinne. And if it be in spozte and to y^e hurt of no man, nor of custome vsed, ne of pleasure that he hath in lying, than it is veniall sinne, and is called in latine, *mendacium iocosum*. And if it be to the profite of his neighbour and to y^e hurte of no man, than it is also venial sinne, and is called in latine *mendacium officiosum*. And though it be y^e lest of those thre, yet it is a venial sinne and would be eschewed. S. Though the midwives of Egypt lye whan they had reserued the male childzen of the Ebrewes, saing to the
Kings

king Pharaos, that the Hebrewes had women, that were cunning in the same crafte, whyche or they came had reserved the children alive, where in dede they the selues of pity & of dread of good reserved them, yet saint Hieromie expoundeth the texte folowing, which saith y^e our Lorde therfore gaue them houses, that is to be vnderstand, that he gaue them spiritual houses and that they had therfore eternal rewarde, & if they sinned by that lye, althoughe it were but venial, yet I cannot see how they should haue therfore eternal reward. And also if a man intending to slea another, aske me where y^e man is, is it not better for me to lye and saye I can not tel where he is, though I know it, then to shew where he is, whereupon murther shoulde folowe? D. The dede that the midwyues of Egypte did in sauinge the children was meritorious and deserued rewarde euerlasting (if they beleued in god) & did good dedes beside, as it is to suppose they did, whan they for the loue of God, refused the death of the innocētes and than though they made a lye after, whych was but veniall sinne, that could not take fro them their reward, for a venial sinne dothe not utterly extinct charitie, but letteth the seruour thereof, and therfore it maye wel stande wyth the wordes of saint Hierome, that they had for their good dede eternall houses, and yet the lye that they made to be a veniall sinne, but neuertheless if such a lie y^e is of it self, but venial be affirmed wth an oth, it is alway mortal if he know it be false that he sweareth. And as to y^e other
questiō

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question it is not like to this question that wee haue in hande as me semeth, for sometime a mā for eschewing of the greater euil maye doe a lesse euil, and than the lesse is no offence in him & so it is in the case that thou hast put, wherein because it is lesse offence to say hee wotteth not where he is, though he know wher he is, than it is to shew where he is. Whereupon murther shoulde folowe. it is therfore no sinne to saye he wotteth not where he is, for euery man is bound to loue hys neyghboure and if he shewe in this case where he is, knowing his death shoulde folowe thereupon it semeth that he loued him not ne that he did not to hym as he woulde be done to, but in the case that we be in here, there is no suche sinne eschewed for though the party pleadeth the general issue. the Jury might finde the trouthe in euerye thing, and therfore in that he saith that the plaintife claiming in by the colour of a dede of feoffement where nought passed entered &c. knowing that there was no such feoffement, it was a lye in him and a venial sinne as me thinketh. And euery man is bound to suffer a deadly sinne in his neighbour, rather then a venial sinne in himselfe.

S. Though the Jury vpon a general issue maye finde the trouthe as thou saiest, yet it is much more dangerous to the Jury to enquire of many poits thā to enquire only of one point. And for asmuch as our lord hath geuen a commandement to euery man vpon his neighbour, therfore euery mā is bound to force as much as in hi þ by him is no occasiō of offence cōe to his neygh-

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neighbour. And for the same cause, the lawe hath ordeined diuers Maximes and principles, wherby issues in the kings court may be ioined vpon one point in certain as nigh as may bee, & not generally, least offence might folow therupō against god, & a hurt also vnto y^e Jury, wherfore it seemeth that he loueth not his neighbour as him self, ne y^e he doth not as he would bee done to, y^e offence such danger to his neighbour, wher he may wel and conueniently kepe it fro him, yf he wil folow the order of the law, and it semeth y^e he putteth himself wilfully in icopardy y^e doth it, & it is w^ritten. Ecclesiastici. iij. Qui amat periculum, in illo peribit, that is to say, he that loueth peril, shal perish in it, and hee that putteth his neighbour in peril to offend, putteth himself in the same, and so should he do me semeth that would wilfully take the general issue, wher he might conueniently haue the special matter, and furthermore it is none offence in princes and rulers to suffer contracts & buying and sellinge in markets, & faires, though both periury & disceipt will folow therupon, because such contracts be necessary for the cōmon welth, so it semeth like wise, that there is no default in the party y^e pledeth such a special matter to auoid fro his neighbour the daunger of periury, ne yet in the court though they induce him to it, as they do sometime for the intent befoze rehearsed, and in likewyse some wyll saye that if rulers of cities and communalities sometime for y^e punishment of felons murderers, & such other offenders wyll to the intent they would haue them to cōfesse y^e truth

¶.i.

saye

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say to them & be suspected, & they be informed in such certayne defaultes or misdeameanozs in the offēdours and & they do to & intent to haue them to confesse the truth, that thoughe theye were not so informed that yet it is no offence to say they were so informed, because they do it for the cōmon welth, for if offēdozs were suffered to go unpunished, the cōmon welth would soone decay & vtterly perish.

D. I will take aduise ment vpon thy reason in this matter til an other season, & I wil now ask thee another question somewhat like vnto thys, I pray thee let me here thy minde therein, .S. Let me here thy question & I shal w good wil say as I think therein.

Addicion.

The.vij. question of the Doctour concerneth the pleadinge in assise, whereby the tenants vse somtime to plead in such maner that they shal cōfesse no ouster

The.liiij. Chapter.

It is commonly vled as I haue hard saye & when the tenant in assise pleadeth & a straunger was leasēd and enfeofed him. and geue th & plaintife a colour in such maner as before appeareth in the.xlvij. Chapter, that & tenaūt many times when he hath pleaded thus, and the plaintife claiming by a colour of a deede of feffment made

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made by the saide ſtraūger, wher nought passed by the dede entred, and þ then they vse to saye further, vpon whom A. B. entred vpon whom the tenaunt entred, where in dede þ sayde A. B. neuer entred, ne happily ther was neuer no such man. How cā this pleading be excused of an vntruth, & what reasonable cause can be why such a pleading should be suffred against þ trouth.

S. The cause why þ manner of pleadinge is suffred is this. If þ tenant by his pleading confessed an immediate entry vpon the plaintife, oz an immediate puttinge out of þ plaintife, which in french is called an ouster, then if þ title were after found for þ plaintif: þ tenāt by his cōfession were attainted of the disseasō. And because it may be þ though þ plaintif haue good title to þ lād, þ yet þ tenāt is no disseasōr. Therfore the tenants vse many times to pleade in suche manner as thou hast said befoze, to saue themself fro confessyng of an ouster, and so if ther be any default, it is not in the court ne in þ lawe, for they know not the trouth therein tyl it bee tried, and me thinketh also that there is in this case right litle default oz none in þ tenant nor in his counsell, specially if the counsaile know þ the tenāt is no disseasour. But as to þ point I pray thee þ thou as thou hast taken a respice to be aduysed oz þ thou shew thy full mind in the question of a colour geuen in assise whereof mention is made in þ said. xlvij. chapr, þ I likewise may haue a like respice in this case till an other time to be aduised, and then I shall with good wyll shew thee my full minde therein.

Æ. ij.

D.

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D. I am content it be as thou sayst, but I pray thee & I may yet adde another question to y. ij. questions before rehearsed of y colours in assise and feele thy mind therein, because y sownethe much to the same effect y the other do (that is to say) to proue y there bee diuers thinges suffered in the law to be pleaded that be against the trowth, & I pray thee let me hereafter know thy minde in all thzee questions, and thou shalt the with a good will know mine. **S.** I praye thee shew me the case that thou speakest of.

D. If a manne steale an horse secretlye in the night. It is vled y thereupon he shalbe indicted at the kings suite, and it is vled y in that idictment it shalbe supposed that he such a daye and place with force and armes, y is to say, wpyth stauces, swordes, and kniues &c. feloniouslye stole the horse against the kings peace, & that for me must be kept in euery indictment, though y felo had neither sword nor other weapon with him but that he came secretly without weapon. How can it therfore bee excused, but that therein is an vntrouthe. **S.** It is not alledged in the indictment by matter in deede y hec hadde suche weapon, for the fourme of an indictment is this *Inquiratur pro domino Rege, si A. tali die et Anno apud talem locum vi & armis videlicet gladijs &c. talem equam talis hominis felonice cepit &c.* And then the twelue men be only charged w the effecte of the byll. That is to saye, whether he be guilty of y felonye or not, & not whether he be guilty vnder such maner & fourme as the bill specifieth or not, & so when they saye
(*billa vera*)

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(billa vera) they say true as they take & effects of the bill to be. And therfore if there were false latin in the bill of indictment, & the Jury sayeth (billa vera) yet their verdict is true, for their verdict stretcheth not to the trowth or falsheid of & latin, but to & felony, ne to the forme of the wordes, but to the effect of the matter, and & is to inquire whether there were any such felony done by & parson or not, and though the bill vary from & day, fro & yeare, & also from the place wher & felony was done in, so it vary not from the shire & the felony was done in.

And the iury saith (billa vera) they haue geue a true verdict, for they are bound by their othe to geue their verdict according to & effect of the bill and not according to the forme of the bill. And so is he & maketh a vow, bounde likewise to & that by & law is the effect of his auow, and not only to & wordes of his auow. And if a mā auow neuer to eat white meat, yet in time of extreme necessity he may eat white meat, rather then die and not break his auow, though he affirmed it with an othe, for by the effect of his auow, extreme necessitie was excepted, though it weare not expressely excepted in & wordes of & auow, & so likewise though the wordes of the bill bee to enquire whether such a man such a day & yeare and in such a place did such a felony, yet & effect of the bill is to enquire whether he did the felony within the shire or no, and therfore & Justices befoze whom such indictments be take, most commonly enforme the Jury & they are bound to regarde & effect of the bill & not the forme.

¶.ij.

And

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And therefore ther is no vntrouth in this case, neyther in hym that made the bill, ne yet in the Jurye as me semeth. D. But if the partye sought the horse bzing an action of trespasse, and declareth that the defendaunt tooke the horse with force and armes, wher he toke hym without force and armes. How may the plaintiff ther be excused of an vntrouth.

S. And if the playntyfe surmit an vntrouth, what is that to the court or to the law, for they must beleue the plaintife, till that he saith be denied by the defendaunt. And yet as this case is, there is no vntrouth in the plaintife to say he tooke the horse with force and armes, though he came neuer so secretly and without weapon, for euery trespas is in the law done with force & armes, so that if he bee attainted and founde guilty of the trespas, he is attainted of the force and armes. And sith the law adiudgeth euery trespas to be done with force, therefore the plaintife sayth truely that hee toke him with force as the lawe meaneth to be force. For though he toke the horse as a felon, yet vpon the felonious taking the owner may take an action of trespas and if he wyll, for euery felony is a trespas and moze. And so I haue shewed thee some part of my mind, to proue that in those cases ther is no vntrouth neither in the parties, neither in the Jury, nor in the law. Neuerthelesse, at a better leasure I will shew thee my mind moze fully therin with good wil as thou hast promised me to do in the cases of the colours of the assise, and of the ouster, that be before rehearsed.

The

The.lv.Chapter fo.164

**The.viij.question of the Dodour whether
the statut of.xlv.of Edward y third
of Silua cedua, stand w
conscience.**

The.lv.Chapter.

In the.xlv.yere of y raigne of king Edward
the thirde, it was enacted that a prohibition
should lye where a man is impleaded in y court
Christien, for dismes of wood of the age of. xx.
yere or aboue, by the name of silua cedua, how
maye y statute stande with conscience y is so
directly against the libertie of the church, and y
is made of such thinges as the Parliament had
no authoritie to make anye lawe of. **S.** It ap=
peareth in the said statute y it is enacted that
a prohibition should lye in that case, as it hadde
bled to do before y time, and if the prohibicion
lay by a prescription before the statute why is
not then y statut good as a confirmacyon of y
prescription. **D.** If there were suche a pres=
cription before the statute y prescription was
voide, for it prohibiteth y payment of tithes of
trees of the age of xx.yere or aboue, and paying
of tithes is groundes as well vpon the lawe of
God, as vpon the law of reason, & against those
lawes lyeth no prescription as it is holdē moste
commonly by al men.

S. That there was such a prescription before
y said statut, and y if a man before y said statut
had bē sued in y spiritual court for tithes of wood
of y age of.xx.yere or aboue y phibicio lay, as

Æ.iiij.

appe=

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appeareth in the saide statute, and it cannot bee
though þ a statute that is made by aucthority
of the whole realme, as well of the kyng and of
the lordes spiritual and tempozall as of all the
commons, will recite a thing against the trueth
and furthermoze I cā not see how it cā be groun-
ded by the lawe of God, oz by þ lawe of reaso þ
the tenth part should be payed for tith and none
other porcion but that, but I thinke that it bee
grounded vpon the lawe of reason that a manne
should geue a reasonable porcion of hys goodes
tempozal to them þ minister to him things spy-
rituall, for every man is boūd to honour god of
his proper substāce, and þ geuing of such porciō
hath not bē only vsed amōg faithful people, but
also amōg vnfaithful as it appereth Gene.xliij
where cozne was geuen to the priests in Egypt
of cōmon barns. And S Paule in his Epistles
affirmeth þ same in many places, as in his first
Epistle to the Corintheans, þ. ix. chapter where
he sayeth he þ woorketh in the church, shal eate
of that þ belongeth to the church. And in hys
Epistle to þ Galathiās þ. vi. Chapter he sayth,
let him þ is instructed in spirituall things, de-
parte of hys goodes to hym þ instructed him.
And saint Luke in þ. x. Chapter sayeth þ the
woorkemā is woorthy to haue his hire. Al which
sayings may right conueniently be taken & ap-
plied to his purpose, þ spirituall menne whiche
minister to the people spirituall things, ought for
their ministracion to haue a competent living of
them that they minister vnto. But that the.x.
part should be assigned for such a porcion & nei-
ther

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ther moze nor lesse. I cannot perceiue that that should be groundēd by y^e lawe of reason, nor immediately by the law of God, for before the lawe w^ritten, there was no certain porcion assigned for the spirituall ministers, neither the .x. parts nor the .xiiij. parts, vnto the tyme of Iacob, for it appeareth. Genesis. xxviii. that Iacob auowed to pay dismes which was among y^e Iewes for y^e .x. part if our lord prospered hym in his iourney, and if the .x. part had ben his duety before y^e auow. it had ben in vaine to haue auowed it, so it had if it had ben groundēd by y^e law of reason and as to that is spoken in the Euangelistes, and in the new law of tithes, it belōgeth rather to the geuyng of tithes in the time of y^e old law then of the new law, as appeareth, Mathewe xxiiij and Luke. xi. wher our lord speaketh to y^e Pharises, saying, wo be to you Pharises y^e tith mintes, rue, and herbes, and forget y^e iudgement and y^e charity of god, these it behoueth you to do & the other not to omit, y^e is to saye, it behoueth you to do iustice and charitie of God, and not to omit payng of tithes though it be of smal thynges, as of mintes, rue, herbes, and such other. And also that y^e the Pharisey saith. Luke. xviij. I pay my tithes of al y^e I haue, is to be referred to y^e old law not to y^e time of the newe lawe. Therefore as I take it y^e the paying of tythes or of a certain porcion to spiritual men for their spiritual ministracion to the people hath bene groundēd in diuers maners. First before y^e law w^ritten a certain porcion sufficient for the spirituall ministers was due to thē by the law of
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The. Iii. Chapter

nature, which after them that be learned in the law of the realme is called the lawe of reason, & that porcion is due by al lawes, and in the law wozitten, the Jewes were bound to geue the .x. part to their priests as well by the sayde auow of Jacob, as by the law of God in y^e olde testament called the Iudicialles. And in y^e new lawe the payinge of the .x. parte, is by a law that is made by the church. And the reason wherfoze y^e .x. part was ordeined by y^e church to be paid for the tithe was this. There is no cause why the people of the new law ought to pay lesse to the ministers of the new law, then the people of the olde testament gaue to the ministers of the olde testament. For y^e people of the new law be bound to greater things then y^e people of the olde law were, as it appeareth Math. v. where it is sayd but your good workes abound aboue y^e workes of the Scribes & the Pharises, ye may not enter into y^e kingdome of heauen. And y^e sacrifice of the olde lawe was not so honozable as the sacrifice of the new law is, for the sacrifice of the olde lawe was only the figure, and the sacrifice of the new law, is the thing y^e is figured, that was the shadow, this is y^e trouth. And therfoze the church vpon that reasonable cōsideracion ordeyned that the .x. part should be payd for y^e sustenaunce of y^e ministers in the new lawe, as it was for the sustenaunce of the ministers in the olde law, & so y^e lawe wyth a cause may bee encreased or minished to moze porciō or to lesse as shalbe necessary for them. D. It appeareth Genesis. xiiij. that Abraham gaue to Melchise-
dech

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deth diſmes, and that is taken to be the .x. part &
 ſ was long before the law written. & therefore
 it is to ſuppoſe ſ he did that by the law of God
 S. It appeareth not by any ſcripture that he
 did ſ by the commaundement of God, ne by any
 reuelacion. And therfore it is rather to ſuppoſe
 ſ hee did parte of duetye, and part of hys owne
 free wil. for in that he gaue the diſmes as a rea-
 ſonable porcion for the ſuſtenance of Melchiſe-
 dech and his miniſters, he did it by the comaun-
 dement of the law of reaſon as before apperech
 but that he gaue the .x. part, that was of his free
 wil, and becauſe he thought it ſufficient & rea-
 ſonable, but if he had thought the xij. part or the
 xij. part had ſufficed, he might haue geuen it &
 ſ with good conſcience. And ſo I ſuppoſe that
 in the new lawe, ſ geuing of the .x. parte is by a
 law of the church, and not by the law of God,
 unleſſe it be taken that the law of the church is
 the law of god, as it is ſometime taken to be, but
 not appropriatly nor immediatly, for that is
 taken appropriatly to be ſ law of god, ſ is con-
 teyned in ſcripture, that is to ſay, in ſ old teſta-
 mente or in the newe. D. It is ſome what
 dangerous to ſaye ſ tithes be grounded onely
 bypon the lawe of the church, for ſome men
 as it is ſaid, ſaye that mannes law byndeth not
 in conſcience, and ſo they mighte happen to take
 a boldnes therby to deny their tithes. S. I truſt
 there be none of that opinion, and if there bee it
 is great pitye. And neuertheles they maye bee
 copelled in ſ caſe by the law of ſ church to pay
 their tithes as well as they ſhould be if paying
 of

The. lvi. Chapter

of tithes were grounded meerly vpon the lawes of God. D. I think well it bee as thou sayest & therfore I hold me cōtēted therin. But I pray thee shew me thy mind i this questiō, if a whole countrey prescribe to pay no tithes for corne or hey, nor such other, whether thou thinke y that prescription is good.

S. That question dependeth muche vpon that y is sayd before, for yf paying of the .x. parte bee by the law of reason or by the law of God, then the prescription is voide, but if it be by the law of manne, then it is a good prescription so y the ministers haue a sufficient porcion beside. D.

John Gerson which was a doctour of diuinity in a treatise y he named Regule morales sayth y dismes be paid to priestes by the law of God

S. The woordes y he speaketh ther of y matter be these (*Solutio decimarum sacerdotibus est de iure diuino quaten⁹ ide sustētent: sed quō tam hanc vel illā assignare: aut in alios reddit⁹ commutare positui iuris existit*) That is thus much to say, y paying of dismes to priests, is of the law of God, y they may therby be susteined but to assigne this porcion or that, or to chaunge it to other rents, y is by the lawe positue, and if it should be taken y by that woorde, *decimarū*, which in English is called dismes or tithes that he ment the .x. parte, and y that .x. parte should be payd for tithe by the law of god, then is the sentence y foloweth after agaynste that saying, for as it appeareth aboue, y text sayth afterward thus, but to assigne this porcion or y or to chaunge it into other rents belongethe to the

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the lawe positive, & is to the lawe of man, and if the .x. part were assigned by God, then may not a lesse part be assigned by the lawe of man, for & should be contrary to & lawe of God, & so it shold be void. And me thinketh that it is not likely & so famous a clark would speake any sentence contrary to the lawe of God, or contrary to & hee had spoken befoze, and to proue he ment not by & terme: decime, & dismes shold alway be taken for the tenth part, it appeareth in the. iij. parte of his woordes in the. xxxij. title littere, wher he saith thus (Non vocat p̄cio curatis debita p̄pterea, decime: eo quod sēper sit decima pars immo est interdū vicesima aut tricesimo.) (That is to say, the porcion due to curates, is not therefore called dismes, for that is alway the .x. part for sometime it is the. xx. or the. xxx. part and so it appeareth & by this woorde decimarum, hee ment in the text befoze rehearsed a certain porcion, and not precisely the .x. part, and that & porcion should be payd to priestes by & lawe of God to sustaine them with, takinge as it seemeth the lawe of reason in & saying, for the lawe of god as it may one waye bee well and conuenientlye taken: because the lawe of reason is genē to euery resonable creature by god. And thē it foloweth pursuantly & it belongeth to the lawe of manne to assigne this porcion or that as necessity shall require for their sustenance, and then his sayinge agreeth well to that & is saide befoze, that is to say & a certain porcion is due for priestes for their spiritual ministracion by the lawe of reason. And then it would folow thereupon that
 yf

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if it were ordeined for a lawe that al paying of
tithes should from henceforth cease & that every
curate should haue assigned to him such certain
porcion of land, rent, or annuities, as should bee
sufficient for him, & for such ministers as should
be necessary to be vnder him, accordinge to the
number of the people there, or that every par-
shener or householder should geue a certain of mo-
ney to that vse: I suppose the lawe were good, &
it was the meanninge of John Gerson as it se-
meth in his wordes before rehearsed, where he
saith, but to chaunge tithes into other rentes is
by the lawe positieue, & is to saye, by the lawe of
man. And some thinketh & if a whole countrey
prescribe to be quite of bothe tithes of corne or
grasse, so & the spiritual ministers haue a suffici-
ent porcion beside to liue vpon, & is a good prescrip-
cion, & & they should not offend, & in such coun-
treies paid no tithes, for it were harde to say, &
al & me of Italy, or of & East parties be damp-
ned because they pay no tithes, but a certain por-
cion after & custome, therfore certain it is to pay
such a certaine porcion as well they as al other
be bound, if the church aske it, any custome not-
withstanding, but if the Church aske it not, it
semeth & by & not askynge the church remyt-
teth it, and an example therof we may take of &
apostle Paule. & though he might haue taken
his necessary liuing of them that he preached to
yet he toke it not, and neuerthelesse they & gaue
it him not did not offend, because he did not ask
it, but if one man in a town would prescribe to
be discharged of tithes, of corne & grasse, me thi-
nke

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keth y^e p^rscripcion is not good, vnles he cā p^roue
 y^e he recōpēse^th it in another thing, for it seemeth
 not resonable y^e he should pay lesse for his tithes
 then his neighbours doe, seynge y^e the spirituall
 ministers are bound to take as much diligēce for
 hī, as they be for any other of y^e parish, wherfore
 it might stand wth reason y^e he should be cōpelled
 to pay his tithes as his neighbors do, vnles he
 cā p^roue y^e he paieth in recōpence thereof more
 thē the .x. part in an other thig. Nevertheless I
 leaue y^e matt^r to y^e iudgement of other, & thē for
 a further p^rofe y^e y^e said p^rscripcion of not pay=
 ing tithes for trees of .xx. yere & aboue though it
 were not good of corn & grasse should be good,
 sōe make this reasō, they say y^e there is no tithe
 but it is either a p^redial tith, a personal tith, or a
 mixt tith, & they say y^e if a tith should be paid of
 trees whē they be so sold, y^e that tith were not a
 p^redial tith, for y^e p^redial tith of trees is of suche
 trees as bring forth fruites and encrease yerely
 as apple trees, nut trees, peare trees, & such o=
 ther. wherof y^e p^redial tith is the apples, nuts,
 peares, & such other fruites as cōe of thē yerely
 & whē the fruites be tithed: if the owner after sell
 y^e trees, ther is no tithe due therby, for .ij. tithes
 may not be payd of one thing, & of these tithes y^e
 is to say, of p^redial tithes was y^e cōmaundemēt
 geuen in the old law to the Jewes, as appereth
 Leuitici. xxviij. where it is said (Quinnes decime
 terre, siue de pomis arborū: siue de frugibus, do
 mini sunt: & illi sanctificantur) that is to say, all
 tithes of y^e earth, either of apples, of trees, or of
 graines be our lordes, & to him they be sanctified
 and

The.lv. Chapter

and though y^e said law speaketh onely of apples yet it is vnderstand of al maner of fruites. And because it sayeth y^e all the tithes of the earth bee our lordes, therfore calves, lambes, & such other must also be tithed, & they be called by some mē p^redial tithes, y^e is to saye, tithes y^e come of the ground howbeit they cal the onely p^redial mediate, & they be the same tithes y^e in this writing be called mixt tithes, and the other tythes (y^e is to say, tithes of apples and corne, & suche other be called p^redial immediate, for they come immediately of the ground, and so do not mixt tithes as evidently appeareth.

D.. But what thinkest thou shalbe the p^redial tithes of alshes, elmes, salowes, alders, & suche other trees as beare no fruites, wherof any p^rfit cometh, why shal not y^e.x. part of the self thig be the tithe therof if they be cut downe as well as it is of corne & grasse?

S. For I thinke that there is to that intent great diuersity betwene corne, grasse, & trees, and that for diuers considerations, wherof one is thys. The propertye of corne and grasse is not to grow ouer one yeare, and if it do: it wyl perish & come to nought, & so y^e cuttynge downe of it, is y^e perfeccion and preseruacion thereof, & the special cause that anye encrease foloweth of the same. And therfore the.x. parte of y^e encrease shall bee payde as a p^redial tithe, and there no deduction shalbe made for y^e charges of it, and so it is of sheepe and beasts y^e must be taken & killed in time, for els they may perishe and come to naught. But when trees be felled: y^e fellynge
is

is not the perfecciō of $\frac{1}{2}$ trees, ne it causeth not the to encrease but to decay, for most commonly the trees would be better if they mighte growe stil And therfore vpon that that is the cause of the decay & destruccion of the, it seemeth there can no prediall tithe arise, and some men saye $\frac{1}{2}$ this was the cause why our lord in the sayde chapter of Leuitici. xxvij gaue no commaundement to tithe the trees, but the fruits of $\frac{1}{2}$ trees onely. D. It appeareth in Paralapo. xxxi. $\frac{1}{2}$ the Jewes in the time of the king Ezechias offered in the temple al thinges that $\frac{1}{2}$ grounds broughte forth & $\frac{1}{2}$ was trees as well as corne and grasse.

S. It appeareth not that they did that by the commaundement of God, and therfore it is like that they did it of their owne deuocion and of a fauour that they had aboue their duty, to $\frac{1}{2}$ repairing of the temple which the king Ezechias had then commaunded to be repaired, and so $\frac{1}{2}$ text proueth nothing that tithe should bee payde for trees, and therfore they saye farther, that trouth it is that if a man to the intent he would pay no tithe, would wilfully suffer his corne & grasse to stand still and perish, he should offende conscience therby, but though he suffer his trees to stand stil continually without felling, because he thinketh a tithe would be asked if hee felled them (so that he do it not of an euil wyll of the curate) he offendeth not in conscience, ne he is not bounde to restitution therfore as he should be if it were of corne and grasse as befoze appeareth and another diuersitie is this. In this case of

y.j.

tithe

The lv. chapter.

tithe woode, that tith therof would serue so litle to that purpose that tithes be paid for, & it is not likely that they that made & law for payment of tithes intended that any tithe shoulde bee paid for Trees or woode, for spirituall ministers muste of necessitie spende daylye and weekelye, and therefore the tithes of Trees or woode that cometh so seldome would serue so litle to the purpose that it should be paid for, & it would not helpe them in their necessitie so & if they should be driuen to trust thereto though it might helpe him in whose time it should happen to fall, yet it should deceiue them that trusted to it in the meane time, and also shoulde leaue the parishes withoute anye to mynister to them. **D.** I would well agree that for trees that beare fruite there should no pzedvall tithe be paid when they be solde, for the pzedvall tithe of them is the fruites that come of them, & so there cannot be two pzedialles of one thing as thou hast said. But of other trees that beare no fruit, me thinketh that a pzediall tithe should be paid when they be solde, and so it appeareth that ther ought to be by the constitution prouincial, made by the reuerend father in god Robert Winchelse late archbishop of Cantorbury, wher it is said & declared & (silua cedua) is of euerye kind of trees, & haue beig in that & they should be cut or that be able to be cut, whereof we will saith he that the possessor of the said woods be compelled by the censures of the Church to pay to the parish church, or mother churche & tithe as a reall or pzediall tithe & so by vertue of & cō-
stituti-

stitution prouincial a pzediall tith must be paid
of such trees as haue no fruit, for I would well
agree that the said constitution prouincial stret=
ched not to trees y beare fruits, though y wo=
des be generall for all trees as before appereth
S. I take not the reason why a pzedial tithe
should not bee paide for trees that beare fruits
to bee because two pzediall tithes can not bee
paid for one thing, for when the tithe is payde
of Lambes, yet shall tithe be paide of woole of
the same shepe, for it is paid for another increase
and so it might be said that the fruit of a tree is
one increase and y felling another, but I take y
cause to be for y two causes before rehearsed I
also for as much as the felling is not properly an
increase of the trees but a destructiō of the trees
as it is said before. And farther I would heare
thy mind vpon the said constitution prouinciall
which wil that tith should bee paid for trees by
the possessoures of the woode, that if the posses=
soure sell the wood for C. li. and geue the buier
a certaine time to fell it in, what tithe shall the
possessor pay as long as the woode standethe.
D. I thinke none for the pzediall tithe com=
meth not till the wood be felled and a parsonal
tithe he cannot pay, no more than if a mā pluck
down his house and selleth it, or if he sell all his
land, in which cases I agree well he shall paye
no tithe neither personal nor pzedial. S. And
then I put case that the buyer selleth y wood a
gaine as it is standing vpon the ground to ano=
ther for CC. li. what tithe shalbe paid than. D.
thā y first buier shal pay tith of y surpullage y
y. ij he

The lv. chapter.

he taketh over the. C. li. that he payde as a parsonall tythe. **S.** And then if the second buyer after that cut it downe and sell it whan it is cut downe for lesse than he paid, what tithe shal the be payde.

D. Then shal he that selleth them pay the tithe for the trees as a pzediall tythe.

S. I cannot see how that can be for he nether hath the trees that the pzediall tythe should be payde for if any oughte to be payde, nor hee is not possessour of the grounde where the trees grow, and therfore if any pzediall tithes should be paid, it should be payde either by the first possessoure, by reaso of the wordes of the sayde constitucion pzovincial, which be that y tith shal be paid by the possessour of the woode, or by the last buyer, because he hath the trees y should be tithed, & by the first possessour the tith can not be paid as a pzedial, for he cut not the down, ne they were not cut downe vpon his bargaine, & by y last buier it can not be payde neither, as a pzedial tithe for the said constitucion saith, that the possessoures of the woods should be compelled to pay it. And therfore I suppose y the truthe is that in that case no tithe shalbe payde, for as to the last seller he shal pay no parsonal tith for he gained nothinge as it appeareth befoze, & no pzedial tithe shalbe paid, for it should be against the said pzediccion, & also the cutting downe is the destruction of trees and not their pzediccion as is said befoze.

D. Than takest thou the said constitucion to be of final effect as it seemeth. **S.**

I take

I take it to be of this effect ꝑ of woode abous
 twenty yere it byndeth not, because it is cōtra-
 ry to the common laswe and to the saide ꝑscrip-
 tion that standeth good in the commō lasw, but
 of woode vnder xx. yere, whercof tithe hath
 bene accustomed to be paide, the constitucion is
 not a gainst the saide ꝑscripcion, because pay-
 ing of tithe vnder xx. yere, is not prohibite but
 suffered by the said statute, how be it some saye
 that by the very rigour of ꝑ cōmon lasw, tithes
 should not be paide for woode vnder xx. yere no
 more then for a boue twenty yeres & that ꝑo-
 hibicion in ꝑ case lyeth by the common lasw, ne-
 uerthelesse because it hath ben suffered to ꝑ cō-
 trary and that in many places tith hath bē paid
 therof. I passe it ouer, but where tithe hath
 not be paide of woode vnder xx. yere I thinke
none ought to be paide at this day in laswe nor
conscience, but admit it ꝑ the saide constitucion
 taketh effect for payment of the woode vnder xx
 yere as of a predial tithe, yet I cannot see howe
 the tithe therof shoulde bee paide by the posses-
 soure of the woode if he sell thē, but ꝑ it should
 be paid rather by him that hath the trees, for ꝑ
 constitucion is that the tith shalbe paide as a
 reall or a prediall tithe, and that is the x. parte
 of the same trees as it is of corne, and if a man
 buye corne vpon the ground, the buyer shal pay
 the tithe and not the seller, and so it should seme
 to be heare, and what the constitucion mente to
 decree the contraiye in tithe woode I can not
 telle, vnlesse the meaning were to enduce the
 owners to pay tithes of great trees when they
 sell

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fel the to theire owne vse whiche mee thinketh
should be very hard to proue to stand wth reason
though the said statut had neuer be made as I
haue saide befoze. And further moze I woulde
here vnder correctiō moue one thing, & y^e is this
y^e as it semeth they y^e were at y^e making of the
said constitucion that knewe the said prescripci-
on did not followe the directe order of charite
therein so perfectlye as they mighte haue done
foz when they made the saide constitucion pro-
uincial, directlye againste the said prescripcyon,
they set a lawe againste custome, and power a-
gainst power, and in maner the spiritualtye a-
gainst the temporalty, wherby they might well
know, y^e great variaunce and suit should folow
and therfoze if they had clerly sene y^e the sayde
prescripcion had beene againste conscience they
shoulde first haue moued the king and his coun-
sel & the nobles of the realme to haue assented
to y^e refozmacion of that prescripcion, and not
to make a lawe as it were by aucthoritie & po-
wer againste the prescripcion & than to thzeat y^e
people & make them beleue y^e they were all ac-
cursed y^e kept the said prescripciō oz y^e maintein
it, and it semeth to stand hardly with consciēce
to repozt so many to stand accursed foz folowing
of the said statut and of the said prescripcion as
there do, and yet to do no moze than hathe bee
done to bring them out of it. ¶ He thinketh
that it is not conuenient, y^e lay men should ar-
gue the lawes and the decrees oz constituciōs of
the Church, & therfoze it were better foz them
to geue credence to spirituall rulers that haue
cure

cure of their soules then to trust to their owne
 opiniōs, and if they would do so, then such mat-
 ters would muche the more rather cease than
 they will do by such reasoninges. **S.** In that
 that belongeth to the articles of the faith, I
 thinke the people be bounde to beleue the chur-
 che, for the church gathered together in the ho-
 ly ghost cannot erre in such thinges as belonge
 to the Catholike faith, but where the Church
 make any lawes wherby the goodes or posses-
 sions of the people may be bounde, or by thys
 occasion or that may be taken fro them, ther the
 people may lawfully reason, whether the lawes
 byndeth them or not for in such lawes the chur-
 che may erre and be deceiued, and deceiue other
 either for singularitie or for conetice or some o-
 ther cause, and for that consideration it partay-
 neth most to them that be learned in the law of
 the Realme, to know such lawes of the church
 as treat of the ordering of landes or goodes, &
 to see whether they may stande with the lawes
 of the realme or not, and therefore it is necessa-
 ry for them to know the lawes of the church, &
 treat of dimes, of executours, of testaments of
 legacies, bastardy, matrimony, & dyuers other
 wherin they be bound to know when the lawe
 of the church must be folowed, & when the lawe
 of the realme, wherof because it is not our pur-
 pose to treat, I leaue to speak any more at this
 time, and wil resort againe to speake of tythes,
 wherin sōe men say $\frac{1}{2}$ of Tin, Cole, & Lede, no
 tith should be paid whē they be sold by $\frac{1}{2}$ owner
 of $\frac{1}{2}$ grounde, because it is part of the inheritance.

The lv. chapter.

and it is moze rather a destruccion of the enheri-
taunce then an encrease: and therefore they say
that if a man take a Tinne woork, & geue the
Lorde the tenth dishe accordinge to the custome
that the Lorde shal paye no tithe of that tenth
dish neither prediall nor parsonal, but if y other
that taketh the woork haue gaines and aduan-
tage by the woork, it semeth that it were not a-
gainst reason that he should pay a parsonal tith
of his gaines the charges dedude.

D. I pray the shew me firste what thou ta-
kest for a parsonall tithe and vpon what ground
parsonall tithes be paid as thou thinkest so that
one of vs mistake not another therin.

S. I will with good will, and therfore thou
shalt vnderstand that as I take it: personall ti-
thes be not paid for any encrease of y ground,
but for such profite as cometh by the labour
or industrie of the parson, as by buying and sel-
ling and such other, and suche parsonal tythes
as I take it, must be ordered after the custome,
and the churche hath not vied to leuy those ty-
thes of compulsion, but by conscience of the par-
ties, neuer thelesse Raymōd saith that it is good
to pay parsonal tithes or with the assent of the
parson, to distribute them to pooze men, or els
to pay a certaine porcion for the whole, but as
Innocent saith, where the custome is that they
should be paid the people be bounde to pay them
as wel as prediales, the expenses deduct, howe-
be it in y church of England they vse to sue for
suche parsonall tithes as wel as for predialles
& that is by reason of y constitution prouinciall
that

that was made by Robert Wynchell late arch
 bishoppe of Contorburie, by the which it was
 ordained that parsonal tithes should be paid of
 craftes and marchandise, and of the lucre of buy-
 ing and sellinge, and in likewise of carpenters,
 Smithes, weauers, Masons, and al other
 worke for hire that they shal pay tithes of their
 hire except they wil geue any thinge certaine to
 the vse or to the lighte of the Church if it so
 please the parson, & in an other place the sayde
 Archebishoppe saith, that of the pashnage of
 woodes and such other thinges &c. and of fysh-
 ynges, trees, bees, doves, and of diuers other
 thinges there remembred, and of craftes, and of
 buying & selling of the profites of diuers other
 thinges there resited, euery man shoulde holde
 satisfie competently to the church, to the which
 they be bounde to geue it of righte, no expenses
 by the geuing of the saide tithes dedutte or with-
 holden but onely for the payment of tithes of
 craftes & of buying & selling, & by reaso of the
 said constitucions prouincialles sometime suits
 be taken in the spirituall court for parsonall ty-
 thes and therof many men do maruaile, because
 deductions many times must be referred to the
 conscience of the parties. And they maruaile al-
 so why a law shoulde be made in this Realme
 for payng of parsonall tithe more than there is
 in other countries. And heare I would glad-
 ly moue thee farther in one thing concerninge
 such parsonall tithes to know thy minde therin
 and that is, if a man geue to another a horse
 and he selleth that horse for a certein sūme shal
 hee

The lv. chapter.

he pay any tith of that summe. D. What thinkest thou therin. S. I thinke that he shal pay no tithe, for there as I take it the profite commeth not to him by his owne industry but by gift of another, and as I take it parsonal tithes be not paide for euerye profite or aduantage that commeth newely to a man, except it cometh by his owne industry or labour, and so it doth not here. And also if he should pay tithe of that he sold the horse for: he should pay tithe for the very whole value of the thing. And as I take it: the parsonal tithes for buyinge and sellinge shall neuer be paide for the value of the thinge but for the cleare gaines of the thinge, and therefore I take the cases befoze rehearsed, where a man selleth his lande, or pulleth downe a house & selleth the stuffe, that hee should there pay no tithe, that it is there to be vnderstand that hee hath that lande or house by gifte or by discente, for if a man buy land, or buy timber & stuffe of a house and sel it for a gaine, I suppose that he should pay a parsonall tithe for that gaine, and this case is not like to a fee or annuity graunted for counsaile wher the whole fee shalbe tithed, for the charges deduct or some certaine summe by agreemente, for there the whole fee cometh for his counsaile which is by his owne industrie. But in the other case it is not so, and the same reason as for the parsonall tithe might be made of trees when they discende or begeuen to any man and he selleth them to another that he shal pay no parsonall tithe. D. We thinketh if the horse amend in his keeping, & then he sell the

the hōrse, & then the tithe shalbee payde of that
 & the hōrse hath encreased in value after & gifte
 & so it may be of trees & hee shal pay tithe of &,
 that & trees may be amended after the gyfte or
 discent. **S.** Than the tith must bee the x. parte
 of & encrease & expenses deducte, & then of trees
 & charges must also be deducte, for it is thā a p=
 sonall tithe, & ther is no tree & is so much worth
 as it hath hurt the ground by the growing ther
 fore there can no parsonal tithe by payde by the
 owner of the ground when he selleth thē, though
 they haue encreased in this time. **N**euertheles
 I wil speake no farther of that matter at thys
 time, but wil shew thee & if Tinne, Lede, cole,
 or trees be sold, & a mixt tith can not grow ther
 by, for a mixt tithe is properly of Calues, Lam-
bes, Digges, and such other that come parte of
 & ground & they be fedde of, and part of the ke=
 ping, industrie and ouersight of the owners as
 it is laide before, but Tinne, Lede, & Cole are
 part of & grounds and of the free holde, & trees
 grow of themselfe, & be also annexed to & free=
 hold and will grow of them selfe, & also & mixte
 tithe must be payde yerely at certaine times ap=
 pointed by the law or by custome of the countrey
 but it may happē & Tinne, Lede, Cole & trees
 shal not be felled nor takē in many yeres, & so it
 semeth it cannot be any mixt tithes, and these be
 some of the reasons which they that would main=
 taine & statute and prescryption to bee good,
 make to proue their intent as they thinke. **D.**
 What thinke they if a man sell the loppes of his
 wood, whether any tithe ought there to be paid
S.

of mixt tith
 156

The lv. chapter.

S. They think al one law of the trees and of the loppes.

D. And if hee vse to fel the loppes once in xij. or xvi. yere, what hold they than?

S. That is all one.

D. And what is their reason why tithe ought not to be paide there as well as for woode vnder xx yere.

S. For they saye that the loppes are to be taken of the same condicion as the trees be, what time so euer they be felled and that no custome wil serue in y case against the statute, no moze than it should doe of greate trees.

D. And what holde they of the barke of the trees.

S. Therin I haue not hearde their opinions, but it seemeth to be one lawe for the loppes.

D. I perceiue well by that thou hast said befoze that thy mind is that if a whole countrey prescribe to be quite of tithes, of trees cozne, & grasse, or of any other tithes, that that prescription is good, so that the spiritual ministers haue sufficiēt beside to liue vpon, doest thou not meane so.

S. Yes verely.

D. And then I would know thy mind if any man contrary to that prescription were sued in the spirituall court for Cozne & grasse, or any other tithes whether a prohibition shoulde lye in that case as it did after thy minde befoze the said statute, where a man was sued in the spiry tual court for tithe woode.

S. I thinke nay.

D. And why not there as well as it did wher a man was sued for the tith woode.

S. For as I take it: there is great diuersitie betwene the cases & y for thys cause, ther is a maxime in the law of Englād y

if any

if any suite be taken in the spiritual court wher
by any goodes or landes mighte bee recovered,
which after þ̄ groūd̄es of the law of the Realme
oughte not to be sued there, though parcase the
kinges court shall hold no ple thereof, that yet a
prohibicion shoulde lye and after whan it hadde
cōtinued long that no tithes were paid of wood
because of the said prohibicion, and that after by
processe of time some curates beganne to ask ty
thes of wood contrarie to the law and contra-
ry to the said p̄scripcion, so that variaunce be-
ganne to rise betwene curates & ther parishners
in that behalfe, than for appeasing of the said va-
riaunce, the saide statut was made, and that as
it semeth moze at the calling on of the spiritual-
tye than of tempozalte, for the statut doth not
exp̄ressely graunt that the prohibicion in þ̄ case
of tith woode shoulde lye so largely as some say
it laye by þ̄ law, how be it, it doth not restraine
the com̄on lawe therein, as it appeareth exp̄-
dently by the wordes of the statute, and so after
some men it appeareth befoze the statut and al-
so after the statute, as I haue touched befoze
that the spirituall court ought not in þ̄ case to
haue made any processe for tithe woode: & ther-
foze if they did, a prohibicion lay by the commō
lawe: & like lawe is if the spiritual court make
processe vpon such a legacy, as by the law of þ̄
realme is void. As if a man bequeth to one, an-
other manes horse, and the spirituall courte
thereupon maketh processe to execute that lega-
cy, there a prohibicion lyeth for it appeareth e-
uidētly in þ̄ libel, if all the trouth appeare in the
libel

The lv. chapter.

libel that in the law of the Realme, the legacye is boide to all intentes. And that hee to whom the legacye is made shal neither haue the horse nor the value of the horse. And in likewise if a man sel his land for C. li. and he is sued after in the spiritual court for tithe of the said C. li. There a prohibition shal lye, for it appeareth in that case openly in the libell, that no tith oughte to be paid, and that the spirituall law ought not in that case to make anye processe whereby the goodes of him that solde the land might bee taken fro him against the law of the Realme, and vpon this ground it is that if a man were sued in the spiritual courte nowe lithe y statute, for a mortuarie y a prohibition should lye, for it appeareth in the libell, that lithe the statute there ought no suit to bee taken for mortuaries, and y same law is if any suit were taken in the spirituall court for a new duitte y is of late taken in some places vpon leases of parsonages and vicarages whiche is called a dimission noble, for it appeareth evidently in the libel if anye bee made therupō y no such processe ought by y law of the realme to be made in that behalfe, but in the case of tith corne, or grasse, or suche other thinges, wherein thou hast desired to know my minde, there appeareth nothing in the libel, but y the suit thereof of right appertaineth to the spirituall law and so for anye thing that appeareth, the party maye bee helpen in the spirituall court by the prescription, and if the case were so farre put, y in y spirituall court they would not allow y said prescription, yet I thinke no prohibition

hibition should lye, for though the spiritual iudges in a spiritual matter deny the parties of iustice, yet the kings lawes cannot reforme that, but must remit it to their conscience. But if there were some remedy provided in that case it were well done, for some saye that in the spirituall court they wil admit no ple against tithes. And also if a composition were made by assent of the patrone and also of the ordinary betwene a parson & one of his parishners that y person & his successoures should haue for a certaine ground so many quarters of cozne for his tythe yerely, & after contrary to the composition the parson in the spirituall court asketh the tithes as they fall that in this case no prohibition should lye, ne yet though the case were further put that the composition were pleaded in the court and were disallowed, but all resteth in the conscience of the Judges spirituall as is said befoze. howbeit because some be of opinion y a prohibition shoulde lye in this last case, wherefoze I wil referre it to the iudgement of other, but in the case of y prescription befoze rehearsed, I take it for the clearer case, y no prohibition shal lye as I haue said befoze. And I beseeche our Lord that thys matter and such other like therto, may be so charitably looked vpon that there be not hereafter such diuisions ne such diuersities of opinions therein as hath beene in time past, whereby hath folowed great costes and charges to many parsons in this Realme, and that hath moued mee to speake so farre in this Chapter, and in diuers other Chapters of this presente booke

The lv. chapter.

booke as I haue done, not intending therby to geue occasion to any person to withhold his tithes that of right ought to be payde, ne to alter y^e portion therein befoze accustomed, but that as mee thinketh they ought to be claimed by y^e same title as the ought to be paid, & by none other, and that it may also somewhat appeare that y^e saide statut of xlv. of Edward the third was well & lawfully made & vppon a good reasonable consideration, & that the said prescriptio is good also so that no man was in anye daunger of excommunication for the making of the saide statute, nor yet is not for the obseruing thereof, ne yet of y^e said prescriptio as it is noted by some persons that there should bee. And thus I commit thee vnto our Lord, who euer haue both thee & mee in his blessed keeping euerlastingly. Amen.

Finis.

Here endeth the secōd Dialogue in English
with new Addicions betwixt a Doctor
and a Student in y^e lawes
of England. And here
after foloweth the
Table.

(.:.)

Hearre after foloweth the table
 to the firste Booke with certain addi-
 ons newly added therto and ouer al
 y chapters & questiōs which be
 newly added: ye shal find en-
 titled this word Addiciō,
 both in the table & also
 in the booke.

The intruduction

Of the law eternal

chap. i *introduction.
ley eternal.*

Of the law of reason, the whiche by Doc-
 tours is called the lawe of nature of reasonable
 creatures

ley naturall.

Of the law of God

chap. ii

Of the law of man

chap. iii

Of the first ground of the law of Englād. ca. vi

ley de dieu.

Addicion

ley de home.

Of the. ii. ground of the law of Englād. chap. vii

ground de ley de dieu.

Of the. iii. ground of y law of Englād. chap. viii

ground de ley de dieu.

Of the. iiii. ground of y law of Englād. ca. viii

ground de ley de dieu.

Of diuers cases, wherein the student doubteth
 whether they be only maximes of the law, or
 they be grounden vpon the law of reason. ca. ix

ground de ley de dieu.

Of the. v. ground of the law of England. cha. x

maximes ou principes de la ley de dieu.

Of the. vi. ground of the law of Englād. cha. xi

maximes ou principes de la ley de dieu.

The first question of the doctour of the lawe of

ground de ley de dieu.

England & conscience

ground de ley de dieu.

What Sinderesis is

ca. xii

Of reason

ca. xiii *quid sinderesis.*

Of conscience

cha. xiiii *de ratione.*

What is equitie

chap. xv *de conscientia.*

In what maner a mā shalbe holpen by equities

chap. xvi *quid equitas.*

*in angl manā hōe serua
in de p equities.*

The Table

in the lawes of England

chap. xviij

*ou stat. rehearse en le
18. chap. soit enuoyé
consuetud.*

Whether the statute hereafter rehearsed by the
Doctour be against consciēce oz not. chap. xviij

*des ley il p.orece
9. p.orece seera rule
solog. le ley*

Of what law this questiō is to be vnderstand,
that is to say wher conscience shalbe ruled after
the lawe chap. xix

adition.

Addicion

adition.

Addicion

*ou conscience seera
ordres solog. le ley*

Of diuers cases where conscience is to bee oz
dered after the law. chap. xx.

adition.

Addicion.

1. qst. del student

The first question of the Student. chap. xxi.

2. qst. del student

The second question of the Student. cha. xxij.

3. qst. del student

The third question of the Student. cha. xxij.

4. qst. del student

The fourth question of the Student. cha. xxij.

5. qst. del student

The fifth question of the Student. cha. xxv.

*qst. le docteur
p.orece les taulles*

A question made by the Doctour, how certain
recoveries sh be vled in the kings courts to delete
tailed land may stand with consciēce. ca. xxvi.

*1. qst. le student
p.orece les taulles*

The first question of the Student, concerninge
tailed landes chap. xxviij.

*2. qst. le student
p.orece les taulles*

The second question of the Student concernig
tailed landes chap. xxviij

*3. qst. le student
p.orece les taulles*

The third question of the Student concerning
tailed landes chap. xxix

*4. qst. ple student
p.orece les taulles*

The fourth question of the Student concerning
recoveries of inheritauce entayled cha. xxx

*5. qst. le student
p.orece les taulles*

The fifth question of the Student concerning
tailed landes chap. xxxi

*6. qst. ple student
p.orece les taulles*

The sixth question of the Student concerninge
tailed landes cha. xxxij

adition.

Addicion

*finis in omni p.emi
lib. xi.*

The ende of the table to the
first Booke.

Chero

¶ Here beginneth the table to the *table al. 2. liii*
 seconde Booke.



The introduction

introduction.

The firste question of ¶ student whether the tenant in tail after possibility of issue extinct, may with conscience doe

wait p. l'entail p. res possibility.

wait

Cap. i.

what is vnderstand by this term when it is said thus. it was at the common law.

Formenty, q. est entere p. res

chap. ii.

The. ii. question of ¶ student whether ¶ goods of men outlawed be forfeit in conscience as they be by the law.

forfeite des biens de illudres.

chap. iii.

The. iii. question of the student, ¶ Is of waite doe by a stranger in lands that be in the hands of particuler tenants &c.

waite p. estrange

chap. iiij.

The. iiij. question of the student whether a man may with conscience be of counsel against him that he knoweth is the heire of right, but he is certified bastard by the ordinary.

Si hoc potest esse de conseil de heire q. est certifié bastard

chap. v.

The. v. question of the student whether a man may with conscience be of counsel with a man at ¶ comon law knowing ¶ he hath sufficiēt matre to be discharged in the chauncery ¶ hee maye not plede at the common law.

Si hoc potest esse de conseil de un q. n. ad dicit en resner

chap. vi.

The. vi. question of the student, whether a man may with conscience be of counsel against ¶ feoffee of trust in an action of trespass ¶ he bringeth against his feoffour of trust for taking the profits.

Si hoc potest esse de conseil de feoffee devers feoffeur a. q. d. p.

chap. viij.

The. viij. question of the student if a mā that by way of distress cometh to his debt, but he ought not to haue distreined for it, what restitution hee is bound to make.

q. restitution fait p. det. dicit p. distress ou il ne doit d'aver de distress

chap. viij.

For what thig a mā may lawfully distrein.

pour q. chose hoc distreignes a.

3. ij.

The

The Table

*C'est l'office et d'ou-
ty exccutors.*

The. viij. question of y student whether execu-
tors be bound in cōscience to make restitucio for
a trespas done by the testatour, & whether they
be bound to pay debis byō a cōtract first, or make
the sayd restitucion chap. x

*En legatory soit
heek cōscience a
payer del sue by
cōtract.*

The. ix. question of y student, whether hee that
hath goods deliuered him by force of a legacye
be bound in conscience to pay a debt byōn a con-
tract y the testatour ought if y executors haue
none other goods in their hands chap. xi

*Si yuine fait un
damages par son
dōt for entey son
eigne frere si en
fostere il payer
les damages de
eyer l'eyne y le
temps de son
vivre.*

The. x. question of y student if a man haue issue
two sonnes and died sealed of certain landes in
fee, the eldest dieth without issu, y yongest reco-
uereth by assise of Mortdancer the lād with
damages fro the death of y father, whether ther
hee be bound in conscience to pay the damages
to the executors of y eldest byether for the time
he lined chap. xij

*Damages par t-
en d'iver.*

The xi. question of y student what damages y
tenāt in dower shal recouer i cōsciēce wher her
husband died not sealed, but she demaunded her
dower and was denied chap. xij

*En fine d'eyn lām
soit bar d'eyn lām*

The. xij. question of y student if a man knowig
another to haue right to his land causeth a fine
w. pclamacion to be leuied according to the sta-
tute & he y hath right maketh no clame with in
fine peres, whether he be barred in cōscience as
he is in the law. chap. xiiij

*tenāt y le rote
sans possession*

The. xij. question of the studēt if a man y hath
had a child by his wife do that in him is to haue
possession of his wifes lands, & shee dieth or hee
can haue it, whether in conscience he shalbe te-
nant by the curtesy chap. xv

The xiiij. questiō of y student, if the grauntour
of

The Table

of a rent enfeoffe y grantee of y rent of parte of
y land &c. whether the whole rent bee extinct in
conscience as it is in the law *extinguishm de
rent y vntly de
possession* chap. xvi

The xv. question of the student, if hee y hathe a
rent out of two acres be named in a recovery of
the one acre he not knowing therof &c. whether
his whole ret be extinct in conscience &c. *grantee de rat hors
de 2 acres nos meien
recovery dū acre* ca. xviij

The xvi. question of y student, if a man haue a
villein for terme of life and the villain purcha=
seth lands in fee & he y hath the villein entreth,
whether he may with conscience kepe y landes
to hi & to his heirs as he may by y law. ca. xviij

The xvij. question of the student if a man in the
case next before enforme him y is in the reuer^{si}o
of the villein that after the death of the villeyne
he hath right to y land and counsaileth hym to
eter wherupō great suit & charges folow. what
danger y is to him y gaue the counsell. chap. xix

The xvij. question of y student is vpon a feoffe
ment made vpon cōdicion y the feoffee shal pay
a rent to a stranger, how the feoffement shal way
in law and conscience *feoffm sur redmō
pue ne payment
estrage extra* chap. xx

The xix. question of the student is vpon a feoffe=
ment in fee, & it is agreed y the feoffee shal pay
a rent to a stranger, how y feoffement shal way
in law and conscience *sur feoffm est agree
ment ou auter extra* cha. xxi

How vles in land began & by what lawe, & the
cause why so much land is put in vls. *Comment vles rōmē
est* cha. xxij

The diuersities betwene two cases, wherof one
is put in the. xx chapter and the other in the. xxi
chapter of this present booke. *indistinct 2 cases
de 20 et 21* cha. xxij

What is a nude contract or a naked promise al
the lawes of Englande, & whether any accor
may lye thereupon. *medū partū* chap. xxiiij

The Table

*deux a son fils
et herite*

**The .xx. question of the student if a man & hath
two sonnes one before espousels, & the other af-
ter espousels by his wil bequetheth to his sone
& heire all his goods, whych of the sonnes shal
haue the goods in conscience.** chap. xxij

*presente p albe
faisset de robe*

**Whether an Abbot may with conscience presen-
t to an aduowson of the church & belongeth to &
house without assent of the couent.** chap. xxvi.

*de son duns l'ange
sont patron p l'ange*

**If a man finde beasts in his corne doing hurte,
whether he may by his owne authozitye take
thē & kepe thē til he be satisfied for & hurt. ca. 27**

*done p vn duns le
age de 25 ans*

**Whether a gift made by one vnder & age of .xxv
yere be good** chap. xxviii

*l'us fagentes puz
heres*

**If a man be conuict of heresy before & ordinary
whether his goods be forfait** chap. xxix

*eletron al d'os
loules patros*

**Wher diuers patros be of an aduowsō, & church
voideth, the patros vary in their presentments,
whether & Bishop shal haue liberty to presente
which of the incūbents & he will.** chap. xxx

*Al l'eps a p'sent
puz le patron*

**How long time & patron shal haue to presente to
a benefice.** chap. xxxi

*absolutum sans
satisfaction*

**If a man be excōmēged whether he may in any
case be assolied wout makig satisfacciō. ca. xxxij**

legatus refuse p pla

Whether a prelate may refuse a legacy. ca. xxxij

*que void p l'fied
de rod p l'fied*

**Whether a gift made vnder a condicion be void
if & soueraign only breke & cōdicion.** ca. xxxiiij

*ope al solis
roverat q' l'fied
ne alien*

**Whether a couenāt made bpō a gift to & church
& it shal not be aliened be good.** chap. xxxv

*presentera a p'ro
8 moys*

**If the patron present not within. vi. monethes
who shal present** chap. xxxvi.

*dux presentmets
a p'p'agne al p'ope*

**Whether & presentment and collacion of all be-
nefices and dignities holding at Rome belonge
onely to the Pope.** chap. xxxvij

*Amiral apprompt
p' r'ag'ne l'ine lue*

**If a house by chaunce fall vpon a horse that is
bozowid**

The Table

bozowed who shall beare the losse.

xxxviii

If a priest haue swonne much money by saying *testament p*
Wasse, whether hee maye geue those goods or *make a wil of them.*

chap. xxxix

Who shal succeede to a clark & dyeth intestate. *Inured clark*
more intestate

Addicion

(chap. xl)

If a man be outlawed of felony, or be attainted *hōe outlawe de felo*
for murther or felony, or y is an *Acisimus may*
be slaine by euery stranger *my lue & estate*

chap. xli

Addicion

addicion

Whether a mā shalbe bound by the act or offere *offere du Jabat*
of his seruant or officer

cha. xlii

Addicion

Whether a villein or a bondmā may giue away *don des biens p*
his goods *villeine*

cha. xliii

If a clark be promoted to the title of his patri- *clark benedison*
mony and after selleth his patrimony & falleth *patrimony*
to pouerty, whether he shal haue his tytle ther-
in.

cha. xliii

Diuers questions taken out by the studēt of *questions hors de*
summes called *Sūma rosella*, & *Sūma ange-*
lica which me thiketh are necessary to bee seene
how they stand and agree with the law of the
realme

cha. xlv

Where ignorāce of the law excuseth in the lawes *de ignorantia*
of England & where not. *non excusat*

cha. xlv

Certain cases and grounds where ignorāce of *de ignorantia*
the dede excuseth in the lawes of England and *facti excusat*
where not

chap. xlv

Addicion

The .i. questio of the D. how y law of Englād *double phalite as*
may be said resonable & phibiteth &c. ca. xlvii *murderers & felons*

The .ii. questio of y D. whether y warrantp of *garantie p la*
the yonger brother y is taken as heire because *puisne frere*

s. iiij.

it is

The Table

It is not knowē but ꝑ the eldest bzother is dead
be in cōsciēce a barre to ꝑ eldest bzother as it is
in the law cha. xlix

gaxratie collatall

The. iiii. question of the D. whether if a mā pro-
cure a collateral warraunty to extinct a right ꝑ
he knoweth another man hath to lād. be a barre
in conscience as it is in the law chap. l.

Wozetle le mere

The. iiii. question of the Doctour of Wzecke of
the sea cha. li.

*Jury prohibite
of mēger et
Boyer.*

The. v. questiō of the D. whether it stand with
conscience to prohibite a Jury of meat & drinke
til they be agreed of their verdict chap. lii.

Solours.

The. vi. questiō of the D. is whether ꝑ colours
ꝑ be geuen at the cōmon law in assises, accions
of trespas and dimers other accions stand wyth
conscience because they be most cōmonly feyned
and not true cha. liii.

addicion.

Addicion

mal oute confesse

r. f

The. vii. question of ꝑ D. cōcerneth ꝑ pleading
in assise whereby the tenaunts vse sometime to
pleade in such maner ꝑ they shal confesse no ou-
ster chap. liiii

lithe wood.

The. viii. question of the D how the statute ꝑ
was made in the. xlv. yere of king Edward the
third concerning the tithe of wood maye stande
with conscience chap. lv

FINIS.

¶ Londini in ædibus Richardi
Tottelli. Anno. 1575.

(✱)

sand
slorungand Kooten